In the Senate of the United States

Sitting as a Court of Impeachment

IN RE IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

POST TRIAL MEMORANDUM OF THE HOUSE OF REPRESENTATIVES

MANAGERS OF THE HOUSE OF REPRESENTATIVES

JACK BROOKS
JOHN CONYERS, Jr.
MIKE SYNAR
JOHN BRYANT
HAMILTON FISH, Jr.
GEORGE W. GEKAS

IMPEACHMENT TRIAL STAFF

ALAN I. BARON, *Special Counsel*
JANICE E. COOPER, *Assistant Special Counsel*
PATRICIA WYNN, *Assistant Special Counsel*
LORI E. FIELDS, *Assistant Special Counsel*

HOUSE JUDICIARY COMMITTEE STAFF
PARTICIPATING IN IMPEACHMENT TRIAL PREPARATION

WILLIAM M. JONES, *General Counsel*
ALAN F. COFFEY, Jr., *Chief Associate Counsel*
DANIEL M. FREEMAN, *Counsel*
PETER LEVINSON, *Associate Counsel*
RAYMOND V. SMIETANKA, *Associate Counsel*

SEPTEMBER 25, 1989

5962-3
4522-16

TABLE OF CONTENTS

INTRODUCTION 1

PART ONE: ARTICLES I - XV
BRIBERY CONSPIRACY
AND FALSE STATEMENTS AT TRIAL 2

A. Statement of Facts 2

1. Background 2

2. The Romano Case 4

3. William Dredge and Further Events in Romano 6

4. The Undercover Investigation 12

5. Contacts Between Judge Hastings and William Borders 38

6. Pre-Trial and Trial Proceedings 42

B. Argument: Article I 50

1. Pattern of Contacts 51

2. Three Separate Times Borders Offered Proof of Judge Hastings' Involvement. Three Separate Times Judge Hastings Complied . 55

a. The May 11 Continuance 56

b. The September 16 "show" at the Fontainebleau 59

c. The October 6 Romano forfeiture order. . 67

3. More examples of Judge Hastings' complicity: the April 9 pay phone call; the October 5 coded conversation; the October 9 flight from Washington; Hastings and Borders' Relationship 72

a. April 9, 1981 73

b. October 5, 1981 75

c. October 9, 1981 84

d. The Relationship of Judge Hastings and William Borders Since the Conspiracy Accusation Belies Respondent's Innocence 88

4. Conclusion 94

C. Argument: Articles II - XV 95

1. Analysis of False Statement Articles 96

2. Impact of Article I on Articles II - XV . . 124

PART TWO: ARTICLE XVI DISCLOSURE OF CONFIDENTIAL INFORMATION 128

A. Statement of Facts 128

1. The Underlying Investigation 128

2. Information Provided to Judge Hastings . . . 130

3. The September 6, 1985 Meeting of Judge Hastings and Mayor Clark 134

4. Mayor Clark Repeats the Disclosure to the Wiretap Subject 135

5. The FBI Learns of the Leak 136

6. The Compromise of the Underlying Investigations 138

7. The Investigation of the Leak 139

8. The Costs of Disclosure 144

B. Argument: Article XVI 146

1. Undisputed Facts Corroborate Mayor Clark's Identification of Judge Hastings as His Source 147

2. No Other Explanation is Possible 149

a. The Dramatic Change in the Course of the Underlying Investigation Dates from September 150

b. No Other Potential Source Had Access to All the Information . . . 150

(1) The Golfing Connection 150

(2) Unexplored Options 152

3. Possible Factual Errors in Mayor Clark's Account Do Not Undermine his Credibility . . 154

4. The Intentional Unauthorized Disclosure of Confidential Information by a Federal Judge is an Impeachable Offense 156

PART THREE: ARTICLE XVII 159

PART FOUR: ADEQUACY OF THE RECORD 162

PART FIVE: STANDARD OF PROOF AND IMPACT OF JURY VERDICT . 165

CONCLUSION 171

INTRODUCTION

By a vote of 413 to 3, the House of Representatives, in its impeachment proceeding, charged United States District Judge Alcee L. Hastings with 17 acts of misconduct that strike at the heart of our democracy. Selling his office for personal gain, fabricating documents to establish his innocence, lying repeatedly under oath at his criminal trial, ignoring the dictates of his own court order to tip off an acquaintance about wiretap information -- these are the separate actions over a period of more than five years which compel the conclusion that Judge Hastings should be removed from office.

In the brief that follows, the House of Representatives summarizes the evidence that was adduced before the Senate Impeachment Trial Committee on each Article of Impeachment and, based upon those facts, presents the argument in support of its case. The facts are complex and detailed; it is only by carefully sifting through this information -- much of it undisputed -- that the true meaning can be appreciated. Unfortunately, that truth presents a tale of enormous tragedy, both for the nation and Judge Hastings.

For all the reasons set forth below, the House of Representatives submits that the Senate should convict Judge Hastings on all 17 Articles of Impeachment now pending before it.

PART ONE

ARTICLES I - XV

BRIBERY CONSPIRACY AND FALSE STATEMENTS AT TRIAL

Part One of this brief addresses the first 15 Articles of Impeachment, which charge Judge Hastings with conspiring with William Borders to obtain a bribe from persons who were criminal defendants in his courtroom, and with knowingly testifying falsely at his criminal trial when charged with that crime. The Statement of Facts below addresses all 15 articles. The argument in support of each article follows.

A. STATEMENT OF FACTS

1. Background

In October, 1979, Alcee L. Hastings was sworn in as a United States District Judge for the Southern District of Florida. Participating in his investiture ceremony was his good friend William Borders, then a Washington, D.C. attorney. Judge Hastings and William Borders were political allies and social friends. Indeed, according to Judge Hastings, William Borders played a role in his appointment to the Federal bench.[1]

---

[1] Report of the Senate Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, S. Hrg. 101-194, Pts. 2A and 2B (hereinafter only the page number is cited) at 2217-18, 2337-38, 2433-34; Stipulation (hereinafter "S.") S.2, S.4, S.5. (A list of the stipulations can be found in S. Hrg. 101-194, Pt. 1 at 865.)

Also attending Judge Hastings' investiture ceremony was Hemphill Pride, a friend of both Judge Hastings and William Borders. Pride was particularly close to Judge Hastings. They had known each other since 1959, had been roommates in law school and had remained very close friends. Each man was godfather to the other's first son. After graduating from law school, Pride had returned to South Carolina to practice law.[2]

In 1977, Hemphill Pride was convicted in Columbia, South Carolina of misusing funds in a federally subsidized housing project. He served one year in prison, beginning in March, 1980. While in prison, Pride asked Judge Hastings to raise money on his behalf in order to hire counsel to pursue certain post-conviction relief. Judge Hastings refused on the grounds that his position as a Federal judge precluded such action.[3]

Pride was paroled in March, 1981, and he immediately began work at two jobs in Columbia, South Carolina. He could not be employed as a lawyer, however, because he was indefinitely suspended from the practice of law by the Supreme Court of South Carolina. As a result of his criminal conviction, numerous proceedings had been held on Pride's ability to practice law, which resulted in his indefinite suspension on May 26, 1981. Neither Judge Hastings nor William Borders directly assisted Pride in the South Carolina proceedings. They were not character witnesses

---

[2] 676-77, 1731, 2217, 2435-36.

[3] 677-78, 683-85, 2258, 2388-89; House Exhibit (hereinafter "HX.") 126.

during the hearings. Nor did they write letters on Pride's behalf.[4]

Under the governing state rules, Pride could not apply for readmission to the South Carolina bar for two years, until May, 1983. He also had to take and pass the South Carolina bar examination. Thus, in 1981, Pride was ineligible for reinstatement to the South Carolina bar.[5]

2. The Romano Case

In November, 1978, Thomas and Frank Romano were indicted on 21 counts of racketeering, mail and wire fraud, embezzlement and false tax filings. The indictment alleged violations of the Racketeer Influenced Corrupt Organization statute ["RICO"] which, under certain circumstances, could result in the forfeiture of property connected with the illegal racketeering activity. The case was assigned to Judge Hastings within the first week he was on the Federal bench.[6]

In December, 1980, the Romano brothers were tried before a jury. The prosecution, handled by James Deichert of the Organized Crime Strike Force of the U.S. Department of Justice, presented evidence that the Romanos had looted a construction project of over a million dollars through various fraudulent means. During the trial, the prosecution also made a proffer to Judge Hastings, out

---

[4] 677-78, 685-86, 715-16.

[5] 678-79, 732-33; HX. 125.

[6] S.6, S.7.

of the presence of the jury, that the Romanos had a history of making payoffs. In addition, Judge Hastings heard evidence indicating that the Romanos had access to large sums of cash.[7]

On December 23, 1981, the jury found the Romano brothers guilty on all counts. Thereafter, the parties agreed to try the resulting forfeiture issues before the court without a jury. Judge Hastings heard part of the prosecution's proof on the forfeiture issues on December 30, 1980. He then continued the matter until February 20, 1981. Thereafter, the Romanos retained a new attorney, Neal Sonnett, to handle their sentencing and appeal.[8]

On February 20, 1981, Judge Hastings concluded the evidentiary hearing on the forfeiture matter. The judge reserved ruling and asked the parties to submit memoranda. Judge Hastings stated that sentencing would not be scheduled because there were to be additional submissions by the parties and the court had not yet received the presentence reports.[9]

On March 13, 1981, the Government filed its proposed findings of fact and conclusions of law on the forfeiture issue. On April 6, 1981, the Romanos filed their memorandum of fact and law in opposition to forfeiture. On April 7, 1981, the Romanos filed objections to the Government's proposed findings of fact. The next

---

[7] 24, 26-28, 2344; S.8.

[8] 26; HX. 2; S.11-13.

[9] S.14.

day, April 8, 1981, the Government filed a lengthy memorandum which sought forfeiture of property totalling $1,162,016 in value.[10]

Throughout 1981, the law clerk in Judge Hastings' chambers assigned to the Romano case was Jeffrey Miller. On April 23, 1981, Miller advised the parties that sentencing of the Romanos would take place on May 11, 1981. The official Notice of Sentencing was filed on April 28, 1981, setting the hearing for May 11 at 1:00 p.m.[11]

Prior to sentencing, on May 4, 1981, Judge Hastings entered a forfeiture order in the Romano case. He adopted all of the proposed findings of fact submitted by the prosecution, ordering the forfeiture of property owned by the Romanos worth $1,162,016.[12]

3. William Dredge and Further Events in Romano

In 1981, William Dredge operated an antique store in North Miami, Florida. He was a career criminal, with a lengthy history of arrests. Through Joseph Nesline, a Washington D.C. gambler, William Dredge met William Borders.[13]

In March, 1981, Borders asked Dredge if he knew the Romano brothers, since Dredge was from the south Florida area. When Dredge responded that he did not know them, Borders asked him to determine whether the Romanos were "stand up" people. Dredge made

---

[10] HX. 2; S.271.

[11] 611-12; HXs. 2, 13; S.15.

[12] 29, 2340; S.17.

[13] 76-77, 165, 244-45.

some inquiries and reported to Borders that the Romanos were trustworthy in the underworld, they were part of the Genovese crime family from Chicago and they had a pending court case. William Borders then asked Dredge to contact the Romanos and tell them that there was an attorney in Washington, D.C. who could help them with their case.[14]

William Dredge passed Borders' message to Philip "Brother" Moscato, a business associate of the Romanos. Hotel and telephone records establish that the Romanos were in California from April 7 to April 11, 1981. During their stay they learned through Moscato that a Washington attorney could help them with their court case. The Romanos then contacted their counsel, Neal Sonnett, and reported the offer. Sonnett documented the call in a memorandum dated April 16, 1981. The Romanos decided to ignore the offer.[15]

Dredge reported to Borders about his attempted contact with the Romanos. Borders stated that the judge handling the Romanos' case was a good friend of his and he could do things with the judge. Dredge testified he did not really believe Borders could control a Federal judge.[16]

During the spring and early summer of 1981, Borders repeatedly asked Dredge about the Romanos. To put Borders off, Dredge falsely reported that he had talked to them and that they were not interested. Dredge also told Borders that the Romanos had already

---

[14] 77-79.

[15] 80, 174-75, 197-98; HXs. 25-26.

[16] 81, 84-85.

paid $50,000 for help from the judge. In response, Borders stated that that was impossible because only he could do business with Judge Hastings. William Borders remarked to Dredge that he would hate to be in the shoes of the person who had promised Judge Hastings' help when the Romanos found the imposter out.[17]

In their conversations about the Romanos, William Dredge admits that he was only stringing Borders along. Dredge had told Philip "Brother" Moscato that if the Romanos were interested in a deal they should get back to him. They never did. After passing the initial message in early April, Dredge never had any contact with the Romanos or Moscato. Dredge testified that he was stringing Borders along because Dredge knew he had his own problems.[18]

On April 29, 1981, a sealed indictment was returned in the United States District Court for the District of Maryland charging William Dredge with conspiring to sell drugs. Dredge was arrested in Florida on Sunday, May 10, 1981 and, through Borders, he hired Jesse McCrary to represent him at his bond hearing the next day, Monday, May 11, 1981. Jesse McCrary was a Miami attorney and close friend of Judge Hastings.[19]

In the morning of May 10, 1981, prior to his arrest, Dredge had had a telephone conversation with William Borders. In that conversation, Borders told him that the Romano brothers were to be

---

[17] 83-84.

[18] 93-95.

[19] 84, 86-87, 157-58, 1448-49, 1457-58; HX. 14.

sentenced by Judge Hastings the next day, that the sentencing would be continued by the judge on the court's own motion and, if the Romanos did not come up with the money, the next time the hammer would fall.[20]

William Borders was right, for the next day, May 11, 1981, Thomas and Frank Romano were scheduled to be sentenced. The parties were also to argue the defendants' motion for new trial and motion for a judgment of acquittal. These motions, if granted, would render sentencing moot.[21]

On May 11, 1981, Judge Hastings held the Romano hearing and proceeded in a most unusual manner. Instead of addressing the pending motions first, which would have been the logical order, Judge Hastings immediately proceeded to sentencing. Neal Sonnett, the Romanos' attorney, then requested a continuance in order to present additional argument to the court on the pending motion for new trial. The Government opposed the continuance on the grounds that five months had passed since the guilty verdict and that the legal issues Sonnett wanted to argue had previously been briefed or raised. Nonetheless, Judge Hastings granted the continuance.[22]

In May, 1981, the local rules of the Southern District of Florida required that counsel give notice to the Court and to opposing counsel prior to moving for a continuance. Neal Sonnett does not recall whether he called chambers to give Judge Hastings

---

[20] 84-85, 169, 250.

[21] 29, 670-71, 2345-46; HX. 4.

[22] 29-31, 670-71, 2345-46; HX. 4; S.19.

such notice, although it would have been his practice to do so if time had permitted. In 1981, it was also the practice of Jeffrey Miller to tell Judge Hastings if an attorney had called indicating he would be moving for a continuance. Moreover, at Judge Hastings' criminal trial, Miller testified that Sonnett did advise the court of his intention to move for a continuance, although before the Impeachment Trial Committee he changed his testimony.[23]

The day after the Romano sentencing was postponed, William Borders called Dredge and told him of the continuance. Dredge thereupon became convinced that William Borders was connected to Judge Hastings and was serious about a bribery deal. It was Dredge's understanding, based on what Borders had told him, that Judge Hastings had postponed the sentencing on his own motion. Defense counsel had actually requested the continuance. However, the fact that Borders knew in advance that sentencing would be continued convinced Dredge that the Romano bribery scheme was for real.[24]

On June 1, 1981, the Romano hearing was rescheduled for July 8, 1981. On June 19, 1981, a panel of the Fifth Circuit handed down a decision in United States v. Martino. At issue in the case was an interpretation of the RICO statute's forfeiture provisions pertaining to the definition of an interest that was subject to forfeiture. The court held that the term "interest" did not include income, receipts or profits from racketeering activity.

---

[23] 30, 213, 222-23, 613-16.

[24] 29-31, 84-86, 117; HX. 4.

The prosecution and defense counsel in Romano recognized that the opinion had important implications for the order previously entered by Judge Hastings on May 4, 1981, forfeiting property owned by the Romanos worth $1,162,016. Accordingly, all parties briefed the issue in papers filed with the Court in advance of the July 8, 1981 hearing.[25]

At the July 8 hearing, Judge Hastings was scheduled to sentence the Romano brothers and hear argument on all the outstanding motions, including a motion to reconsider his May 4 forfeiture order. Prior to the hearing, Jeffrey Miller gave Judge Hastings a memorandum discussing the Martino case and its impact on Romano. Miller also briefly discussed the issues with the judge prior to the hearing. After extensive argument on the forfeiture issue, Judge Hastings stated to counsel that he was familiar with Martino and had read the briefs. He then reaffirmed his order of May 4, 1981, forfeiting $1,162,016 of the Romanos' property. He stated that he would file a brief written order explaining the basis for his decision.[26]

Judge Hastings then sentenced each of the Romanos to three years in prison and advised them of their rights of appeal. The prison terms were consistent with the recommendation of the probation office. However, the prosecutor, James Deichert, was surprised by the stiff sentences because Thomas and Frank Romano were both over 60 years of age, they had no other criminal

---

[25] 31, 33-34, 36-37, 626-27, 2346-47; HXs. 2, 5.

[26] 32, 37, 627-30, 636, 2279-80; HXs. 6, 119; S.24.

convictions, and one of the brothers had a serious heart problem. The three year sentences could have been life sentences, given the age and medial condition of each of the Romano brothers. Defense counsel had requested probation.[27]

4. The Undercover Investigation

On June 3, 1981, the case of United States v. Accardo was brought in the Southern District of Florida. This was a multi-defendant racketeering case in which Santo Trafficante, reputed to be the organized crime boss of southern Florida, was named as a defendant. The case was assigned to Judge Hastings. A month later, William Dredge flew to Washington, D.C. and stayed with Joseph Nesline from July 7-9, 1981. At that time, Nesline had another guest at the apartment -- Santo Trafficante. While at the apartment, Dredge observed Trafficante trying to contact William Borders. Bits and pieces of conversation he heard during that visit and during a second visit from July 16-18, 1981, led Dredge to believe that William Borders and Judge Hastings were involved in a bribery scheme to obtain money from Santo Trafficante. There was no doubt that any person who attempted to defraud Trafficante would be in a very dangerous situation.[28]

---

[27] 32-33, 57; S.25-26.

[28] 87-91, 236-37, 382; HXs. 17-19, 111-14, 216; Prior Testimony (hereinafter "PT") of Laverne Boone at 481-83. (Prior testimony citations are to the reprint of that testimony in S. Hrg. 101-194, Pts. 2A and 2B.)

On July 20, 1981, Dredge advised the United States Attorney's Office in Miami that he had information concerning a bribery scheme involving Judge Hastings, Santo Trafficante and a prominent Washington, D.C. lawyer who was coming to Miami the next day to meet with Trafficante. In return for this information, Dredge wanted the drug charges pending against him in Maryland dismissed. In the course of ensuing discussions with Government prosecutors, Dredge also revealed the proposal to solicit a bribe from the Romanos -- the essence of which was that for $150,000 their sentences would be reduced to probation.[29]

Dredge did not initially identify William Borders as the Washington lawyer who was arriving the next day to meet with Trafficante. However, Martha Rogers, a Miami Strike Force attorney who had worked in Washington, recognized Borders' name on a passenger list and visually identified him at the airport. The FBI followed Borders, who took a cab to William Dredge's house and was later driven by Dredge to a shopping center. From there Borders took a cab to the Fontainebleau Hotel, where the FBI observed him meeting with Santo Trafficante for 15 to 20 minutes. Trafficante then drove Borders back to the airport. As they parted, Trafficante was overheard telling Borders, "good job."[30]

William Dredge continued to be debriefed by the Government concerning his knowledge of the bribery schemes. He met with William Murphy, a veteran FBI agent who became the case agent.

---

[29] 92-93, 238-41, 244.

[30] 24, 238-39, 241-42, 243, 246-47.

Dredge relayed that William Borders had stated that as proof to the Romanos that he was the only person connected to Judge Hastings, Borders would have the judge show up at a pre-arranged time and location. Dredge also relayed, during the week of August 21, 1981, that Borders was coming again to Miami to meet with Santo Trafficante or Judge Hastings. FBI surveillance teams observed that on August 21, 1981, Borders flew to Miami, took a taxi to the Fontainebleau Hotel, got out of the cab, and got into a car driven by Trafficante, who thereupon drove him back to the airport. They spoke for five to ten minutes at the terminal and Trafficante left.[31]

On August 27, 1981, the Fifth Circuit handed down the case of United States v. Peacock,[32] which followed the Martino opinion. The Peacock decision did not have any additional precedential significance with respect to the forfeiture issue in Romano, for once the Martino opinion had been issued, it was the law of the circuit until it was either reversed or overruled by the entire Fifth Circuit en banc. One Fifth Circuit panel must follow a prior decision of another Fifth Circuit panel.[33]

Having twice corroborated William Dredge's statements regarding William Borders and Santo Trafficante, the Government attempted to enlist Dredge's cooperation in investigating the

---

[31] 93-94, 243-44, 247-49, 369; HX. 71; PT of Richard Lowe at 449.

[32] 654 F.2d 339 (5th Cir. 1981).

[33] 59, 632; HX. 121; S.111.

alleged bribery schemes in Judge Hastings' courtroom. Dredge refused to cooperate in an investigation of the Trafficante bribery deal because he feared for his and his family's welfare -- fears that the FBI believed were justified. Dredge was willing, however, to introduce Borders to an undercover agent posing as one of the Romano brothers.[34]

During late August and early September, 1981, William Dredge was in contact with Borders and told him that the Romanos were interested in the bribery scheme. He advised the FBI that Borders was anxious to do the Romano deal, but that he would only deal with one or both of the Romanos. On September 10, 1981, Dredge, in the presence of Special Agent Murphy, telephoned Borders and told him that the Romanos were ready to meet and make a deal. Arrangements were made for Dredge to meet Borders at the Miami International Airport on Saturday, September 12 at 8:00 a.m., and introduce him to "Frank Romano," who was to be impersonated by retired FBI agent, H. Paul Rico.[35]

Earlier that day, Judge Hastings had called Borders. He had left a message that he would be in chambers between 4:30 and 5:00 p.m. to receive Borders' call. After Borders and Dredge set up the first meeting with "Frank Romano," Borders called Judge Hastings at 4:40 p.m. Then, at 5:10 p.m., Judge Hastings left the following message at William Borders' office: "He'll be waiting for call - Have them get him off the bench[.] He'll also let them know if

---

[34] 94-95, 249.

[35] 92-95, 250-53; HXs. 11d, 205.

you call to get him to phone." At 5:34 p.m., a four minute call was made from William Borders' law office to Judge Hastings' chambers.[36]

The next day, Friday, September 11, 1981, Judge Hastings was scheduled to fly from Miami to Washington, D.C., leaving Miami at 3:48 p.m. This flight, however, was delayed and Judge Hastings called Borders' office twice to advise Borders of that fact. The judge did not arrive at Washington National Airport ["National"] until about 8:00 p.m., two hours after his original scheduled arrival time.[37]

On the same day, Borders was scheduled to leave National for Miami at 7:30 p.m., in order to make his meeting at 8:00 the next morning with Dredge and "Frank Romano." Borders, however, changed his flight to leave at 9:20 p.m., thereby arriving in Miami at 1:30 a.m. on September 12. This change created a clear opportunity -- a period of over an hour -- when Judge Hastings and Borders could have met at National, although no one actually observed such a meeting. Judge Hastings did not check into the Washington Sheraton Hotel until 10:14 p.m., over two hours after he arrived in Washington, D.C.[38]

The next morning, September 12, 1981, Borders met Dredge and the man who he thought was Frank Romano at the Miami airport. The undercover agent, H. Paul Rico, was wearing a body recorder and

---

[36] HX. 28; S.35-38.

[37] 2240-41; HXs. 30, 31d, 32; S.39-42.

[38] 258; HXs. 33-35, 37, 99; S.43-44, S.46.

recorded the conversation with Borders. At the meeting, Borders stated that he understood that the Romanos had "lost some property." He advised Rico that 10 days after receiving a payment of $150,000, an order would be signed returning a "substantial amount" of the property and thereafter, they were to withdraw their appeal and something would be done about their jail sentences. When Rico raised the issue of "how do I know," Borders responded, "checks and balances." Borders said, "I don't get nothin', until the first part is done. . .that will be a signal showing you that I'm, I know what I'm talking about, right?"[39]

Rico noted that the main concern for himself and his brother was the "time," i.e., not being imprisoned. To further satisfy Rico that he could deliver on his promises, Borders proposed that the money be placed in escrow with Dredge and that Borders would only receive the money after the order came down. Rico said he preferred not to use Dredge and, aware that Borders had previously stated that he could prove his influence with Judge Hastings by having him show up at a given time and place, Rico proposed verification in this manner. Rico asked if Borders wanted to get back to him with the time. Borders said that was unnecessary and immediately selected Wednesday, September 16, 1981, as the date for Judge Hastings' appearance. Rico selected the main dining room in the Fontainebleau Hotel in Miami Beach at 8:00 p.m.[40]

---

[39] 95, 258, 271, 286-87, 403-04, 409-10, 412, 415, 418-19, 424-25; HXs. 38a-b.

[40] 272-73, 412, 424-25; HXs. 38a-b.

Borders and Rico agreed to meet the following Saturday, September 19, 1981, at the Miami airport, at which time Rico would make an "up front" payment on the bribery deal. At the conclusion of their meeting Borders assured Rico, saying "that's 100 percent, 100 percent, 100 percent."[41]

At the time of his conversation with Rico about the status of the Romano case, William Borders had no official connection with the case. He neither participated in the case nor had filed a notice of appearance as counsel. He was not a member of the Florida bar. He never called Judge Hastings' secretary to obtain information about the Romano case. Nor did he know the law clerk, Jeffrey Miller.[42]

When Borders finished his meeting with the undercover agent, he flew from Miami to West Palm Beach and drove to a long-planned family reunion. He stayed there only about an hour, however, and almost as soon as he arrived, started making a complex series of reservations and cancellations of airplane flights back to Washington, D.C. He drove to two different cities, Melbourne and Orlando, in his attempt to fly back to Washington that day. Ultimately, Borders flew from Orlando, Florida to Baltimore-Washington International Airport ["BWI"], arriving at 8:58 p.m.[43]

---

[41] 273-74; HXs. 38a-b, 43a-b.

[42] 25, 1753; S.58. Moreover, Judge Hastings denies ever discussing the Romano case, even innocently, with Borders. HX. 156 (at 2064-65).

[43] 427-29; HXs. 72-74; S.60, S.62, S.66, S.71-72, S.254-56; PT of Laverne Boone at 494-95, PT of Richard Lowe at 452.

Judge Hastings was spending that weekend of September 11-13, 1981, in Washington, D.C. at the Sheraton Hotel. Jesse McCrary, his close friend who had represented William Dredge, registered at the Sheraton Hotel on the 12th in the room next to Judge Hastings.[44]

Around 9:00 p.m. on Saturday, September 12, 1981, Borders landed at BWI. From there he went to the Sheraton Hotel in Washington, arriving at Judge Hastings' room at 10:00 p.m. When Borders arrived, Judge Hastings, Jesse McCrary and three women -- two sisters, Pearl and Margaret Dabreau, and Donna Mendez Myrill -- were in the judge's room. The group had not yet had dinner. Donna Mendez Myrill testified before the Impeachment Trial Committee that either Judge Hastings or Jesse McCrary had told her they were waiting for William Borders, whom Ms. Myrill also knew. She further testified that when Borders arrived, Judge Hastings was not surprised. Likewise, Pearl Dabreau recalls that the group in Judge Hastings' Sheraton Hotel room were waiting for something. And, Jesse McCrary remembers that the group was sitting, talking, doing nothing and waiting. After Borders arrived, the entire group went to dinner.[45]

On Tuesday, September 15, 1981, Borders and a friend, Madeline Petty, flew from Washington, D.C. to Las Vegas, Nevada to attend the Sugar Ray Leonard-Tommy Hearns championship fight scheduled for Wednesday, September 16. This trip had been planned as a birthday

---

[44] 2242; S.73-74.

[45] 511-12, 515-17, 1455, 1460-62, 1724-25, 1727, 2242, 2244-46; HXs. 156 (at 1840-41, 2110-11), 205, 227.

present for Ms. Petty; the plane tickets had been purchased two weeks earlier on September 1, 1981. It was Borders' usual practice to attend major fights, and he had told many people that he was going to Las Vegas, including his secretary, Cynthia Rogers; Hemphill Pride; and even H. Paul Rico, the undercover agent posing as Frank Romano.[46]

September 16, 1981 was also the date Borders and Rico had agreed that Judge Hastings would appear at the main dining room of the Fontainebleau Hotel at 8:00 p.m. in order to prove that the judge was in on the bribery deal. FBI agents had the hotel under surveillance. Shortly before 8:00 p.m., Judge Hastings and a woman named Essie Thompson were observed entering the Fontainebleau Hotel, looking around the hotel and walking into the dining room.[47]

Judge Hastings testified at his criminal trial and before the Impeachment Trial Committee that Borders had promised to meet him at the Fontainebleau that night but had not shown up. According to Judge Hastings, his appearance was not part of the Romano bribery scheme. However, neither during their telephone conversations arranging the dinner, nor during the evening itself, did Judge Hastings ever mention Borders to Ms. Thompson or indicate that they were meeting anyone. Nor did Ms. Thompson ever hear the judge tell the hostess or waiter that he intended to meet Borders or anyone else that evening. Judge Hastings had made reservations

---

[46] 273-74, 732-34, 843-46; HXs. 38a-b, 39, 40; S.77-79; PT of Madeline Petty at 858.

[47] 272-73, 517-22, 2247-48; S.86, S.89.

for two. When the maitre d' seated them at a table for four and removed two place settings, he did not protest. And, sometime after they ordered drinks but before their dinner was served, Judge Hastings left the table and walked to a lounge area of the hotel. When he returned to the table, Judge Hastings told Ms. Thompson that he had been "looking for some friends from D.C." However, Judge Hastings did not check other restaurants in the hotel. Nor did he have Borders paged.[48]

Borders, of course, was in Las Vegas at the championship fight. He and Ms. Petty returned to Washington, D.C. two days later, on Friday, September 18, 1981, between 8:00 and 9:00 p.m. At the airport, Borders and Ms. Petty parted company. Borders took a 9:20 p.m. flight to Miami, in order to make his arranged meeting with Rico the next morning for the "up front" payment on the bribe.[49]

H. Paul Rico had not told William Borders that Judge Hastings had appeared at the Fontainebleau Hotel on September 16, as promised. Borders nevertheless proceeded directly from National to Miami for his rendezvous with Rico as if he knew that the signal confirming Judge Hastings' involvement had been given.[50]

On Saturday morning, September 19, 1981, at 10:00 a.m., Borders and Rico again met at the Miami International Airport. Rico was wearing a body recorder. After an exchange about the

---

[48] 518-22, 2248-49, 2315, 2371-74; S.86, S.89.

[49] HXs. 41-42, 75-76; S.90.

[50] 409-10; HXs. 41-42, 75-76; S.90.

Leonard-Hearns fight, the undercover agent said: "You did what you said you'd do." Borders acknowledged this and Rico continued, "Your man arrived and in fact, he arrived a little early and, ah, you said you could do that, and that's ah, your end of the situation." Borders then asked, "What is it in?" and Rico replied that it was just in an envelope. Rico said he would put it inside a newspaper and give it to Borders. The undercover agent then said "[B]efore we go any further, the last time we talked my understanding was that, ah, some property was going to be released." Borders said the property would be released within 10 days. He told Rico, "Once you do that then file a motion for mitigation of sentence." Borders said, "Just tell him [the attorney] you're tired of the appeal, just see if the man will reduce the sentence."[51]

The two men then separated and Rico went to get $25,000 in cash which had been placed in a locker. The undercover agent returned and placed the newspaper containing the envelope with the money on the arm of a sofa. Borders picked up the newspaper. There was further conversation, and Borders told Rico that the money would cover a reduction in sentence for both Romanos. They then discussed when the balance of the bribe would be paid. Borders suggested it be paid as soon as the order was entered returning the forfeited money. Rico proposed another installment payment, then full payment "on the culmination," i.e., when the sentences were reduced. Borders objected that this was not the

---

[51] 274, 286-88, 407-08, 409-10, 413-14; HXs. 43a-b.

deal. He again proposed that the money be put in escrow with Dredge. Rico rejected that idea. They finally agreed that on October 3, 1981, after Judge Hastings issued the order returning a substantial amount of Romano property, the remaining $125,000 would be paid.[52]

There was no further contact between Borders and the undercover agent between September 19 and October 2, 1981. The order returning a substantial portion of the forfeited property was not issued within 10 days of September 19 as Borders had promised.[53]

On October 1, 1981, a lawfully authorized wiretap was placed on William Borders' business phone, and on Friday, October 2, 1981, a similar tap was placed on his residential phone. Rico placed four calls on Friday, October 2, to Borders' office. Borders was out, but he arranged to have a call patched through to him. At 3:11 p.m., Rico spoke to Borders and told him nothing had happened regarding the order. Borders replied "I think it has. . .I'll check into it," and then suggested they cancel the scheduled October 3, 1981 meeting for the final payment. Borders said he was not sure he would be able to call Rico back that night; he explained he did not know if he could find out "because of the time." They agreed that Rico would call Borders at home two days later, Sunday, October 4, 1981.[54]

---

[52] 288, 407-08, 414-15; HXs. 43a-b.

[53] 288, 409-10.

[54] 287-97; HXs. 44a-b, 45a-b, 47a-b, 48a-b, 49a-b, 50a-b; S.101, S.103.

By 4:50 that Friday afternoon, Borders was back in his office. In a call recorded by the FBI, Borders' secretary called Judge Hastings' chambers and was told that Judge Hastings had left for the day.[55]

On Sunday morning, October 4, Rico called Borders as agreed to find out the status of the order. Borders explained, "I have not, ah, gotten an answer, cause I haven't been able to talk to anybody." He then asked Rico to call back the next day. That afternoon William Borders called Judge Hastings and left a message for him to return the call.[56]

On Monday morning, October 5, 1981, Judge Hastings told his law clerk, Jeffrey Miller, to finish that day the Romano order returning a substantial amount of forfeited property. Miller testified that Judge Hastings' request was unusual. Judge Hastings had never before asked Miller to prepare an order in Romano the very same day. Moreover, Miller went home to work on the order.[57]

At 4:22 p.m., on October 5, 1981, Rico again called William Borders. He said he was anxious. Borders said he understood, that he had checked on the matter, that the order had not gone out yet, but "that's been taken care of." Borders said it probably went out

---

[55] HXs. 51a-b; S.107.

[56] 2252-53; HXs. 52a-b, 156 (at 1846); S.109.

[57] 621-22, 2286, 2377.

that day, the 5th, or would go out first thing in the morning, on the 6th.[58]

Less than one hour later, at 5:12 p.m., Judge Hastings called William Borders and the following conversation occurred:

BORDERS: Yes, my brother.

JUDGE HASTINGS: Hey, my man.

BORDERS: Um hum.

JUDGE HASTINGS: I've drafted all those, ah, ah, letters, ah, for Hemp. . .

BORDERS: Um hum.

JUDGE HASTINGS: . . . and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?

BORDERS: Yea.

JUDGE HASTINGS: Oh. Okay.

BORDERS: Uh huh.

JUDGE HASTINGS: Alright, then.

BORDERS: See, I had, I talked to him and he, he wrote some things down for me.

JUDGE HASTINGS: I understand.

BORDERS: And then I was supposed to go back and get some more things.

JUDGE HASTINGS: Alright. I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning.

BORDERS: Okay.

JUDGE HASTINGS: Okay.

BORDERS: Right.

---

[58] 307-09; HXs. 53a-b; S.115.

JUDGE HASTINGS: Bye bye.

BORDERS: Bye.

This was a coded conversation intended to convey information concerning the bribery scheme. Judge Hastings was confirming that the deal was still on before signing and sending out the forfeiture order, returning over $800,000 of Romano property. Judge Hastings testified at his criminal trial and before the Impeachment Trial Committee that it was not a coded conversation, but rather a discussion about some letters he was drafting to help Hemphill Pride. The House of Representatives submitted the tape recording and the transcript of this conversation to a recognized expert in the field of linguistics, Professor Roger Shuy of Georgetown University, who analyzed the conversation and concluded that Judge Hastings and Borders were using a code.[59]

The next day, on October 6, Judge Hastings issued an order that returned $845,000 of the $1,162,016 worth of Romano property previously ordered forfeited. Jeffrey Miller had returned to chambers that day with the final draft, which the secretary typed. Judge Hastings had then put pressure on his staff to get the order out that day. He told Marilyn Carter, his deputy clerk, "Sorry for the rush, but this must go out today." Ms. Carter felt pressure from the judge to drop other work and to get the Romano order out. She also could not understand why there was such a rush, for the order did not involve a time limit. Unlike any other order or

---

[59] 534, 536-37, 605; HXs. 54a-b; S.117.

correspondence in the Romano case, the October 6 order went out special delivery.[60]

In that order, Judge Hastings reversed in large measure his forfeiture order of May 4, 1981. The new forfeiture order was inconsistent with his prior ruling from the bench on July 8, 1981, even though the law had not changed since July and there had been no further filings or proceedings pending before him. The October 6, 1981 order was consistent with the bribery scheme set up by William Borders and Rico -- it returned a substantial amount of the Romanos' forfeited property, and it did so within days of the series of phone calls between Rico, Borders and Judge Hastings.[61]

Rico called Borders at mid-day on October 7 inquiring again about the status of the order. This time Borders said "it went out yesterday morning." This assertion corresponds to Borders' October 5 conversation with Judge Hastings in which the judge said he would send out "the letters in the morning." That night Rico called Borders back to tell him he had received word that the order had been issued. They discussed arrangements for the final payoff. Rico offered to travel to Washington, D.C. on Thursday or Friday, October 8 or 9. Borders agreed and told Rico to call him when he got to town.[62]

The National Bar Association had scheduled a testimonial dinner in honor of William Borders, a past president of the

---

[60] 1744-45, 1768, 1784-85, 1789, 2378-79; HXs. 8; S.118.

[61] 40-41; HXs. 43a-b.

[62] 309-17; HXs. 54a-b, 56a-b, 60a-b; S.123.

organization, for October 9, 1981, in Washington, D.C. Judge Hastings was one of the sponsors of the dinner. On the morning of October 8, 1981, Borders received a call from Judge Hastings who stated that he would be arriving in Washington the next day at 10:40 a.m. Judge Hastings told Borders he was staying at the Washington Hilton, although he would prefer to be at the L'Enfant Plaza Hotel. Borders said he could always get Judge Hastings in there.[63]

Borders picked up Judge Hastings at National on the morning of October 9. They drove from the airport to the L'Enfant Plaza Hotel where a suite and an adjoining room were assigned to them. While at the hotel, Judge Hastings sent a suit to the valet service. They stopped briefly to see Hemphill Pride, who was also staying at the L'Enfant Plaza Hotel for the NBA event. Judge Hastings and Borders then left the hotel and after a couple of intermediate stops arrived at Borders' office where Borders had a message to call "Frank" [Rico] at the Twin Bridges Marriott Hotel. Borders called, and Rico told Borders he had "brought all the necessary papers." Rico and Borders agreed to meet at the Marriott in about an hour.[64]

When Borders arrived at the Marriott, he told Rico, who was wearing a recording device, to "get it" because he wanted to take a ride. Borders and the undercover agent got into Borders' car,

---

[63] 2237; HXs. 61a-b; S.126-29.

[64] 321, 691-92, 2260-63; HXs. 62a-b, 64a-b, 129; S.130-133, S.136, S.167.

with a bag containing $125,000 in 100 dollar bills on the seat between them. As they started to leave the parking lot, the FBI pulled them over and arrested Borders.[65]

Prior to October 9, 1981, the Public Integrity Section of the U.S. Department of Justice, in consultation with the FBI, had decided to arrest William Borders and seek his cooperation some time after he received the final $125,000 payment on the bribe. The Government decided to make the arrest as Borders was driving away from the Marriott Hotel because of a fear for Rico's safety. The FBI had no way of knowing where Borders was going with the retired agent, and Rico was not wearing a transmitter. In addition, neither the Public Integrity Section, nor the FBI, believed that Borders would pass any of the $125,000 directly to Judge Hastings. Instead, being sophisticated, they would pass the money in a manner that could not be traced. The upfront $25,000 that was paid to Borders on September 19, 1981 was never found.[66]

Borders was arrested just before 1:00 p.m. At 1:18 p.m., Borders requested and received permission to telephone his attorney, John Shorter. Shorter arrived at the Marriott at 1:31 p.m. After speaking privately with his attorney, William Borders stated that he would not cooperate with the Government.[67]

At 1:55 p.m., Special Agent Murphy left for Borders' law office to locate and interview Judge Hastings. Two other agents

---

[65] 313-17, 317-21, 324, 328; HXs. 65a-b, 66; S.142.

[66] 317-21, 324, 376-77, 404, 407.

[67] 398-99; HX. 66; S.145-46.

22-307 0 - 89 - 2

accompanied him in order to serve a subpoena for documentary records. The agents entered the office at 2:40 p.m. and discovered that Judge Hastings was no longer there. They presented the subpoenas to Borders' secretary, who was uncertain how to deal with the situation. She contacted Shorter, and Agent Murphy explained the subpoenas to Shorter, who then told the secretary to accept them.[68]

In addition, Special Agent Murphy told Shorter that he was trying to locate Judge Hastings in order to interview him. Special Agent Murphy asked Shorter to give his name, another FBI agent's name and the number of the FBI Washington field office to whoever might be able to get in touch with Judge Hastings.[69]

Special Agent Murphy and the other agents then proceeded to the L'Enfant Plaza Hotel. They arrived at approximately 3:00 p.m. and inquired at the front desk to learn Judge Hastings' room number. Using the house phone, the agents called Judge Hastings several times and received no response. They then went up to Judge Hastings' room and knocked on the door. Again, there was no response. After one of the agents checked the bar/restaurant area, at approximately 3:35 p.m., the FBI agents left the hotel.[70]

After William Borders had left his office to meet "Frank," Judge Hastings had also left and, after making a few stops, he had returned to his room at the L'Enfant Plaza Hotel. Judge Hastings

---

[68] 329-30.

[69] 329-30.

[70] 330.

ordered lunch from room service around 1:00 p.m. Shortly thereafter, Hemphill Pride dropped by and joined him for lunch. Afterwards, they went downstairs for drinks in the hotel's cocktail lounge. While in the lounge, there was no discussion of Judge Hastings helping Pride obtain financial assistance or reinstatement to the South Carolina bar. Nor was there any discussion of letters of support, which had been discussed by Judge Hastings and Borders in the October 5 conversation believed to be in code.[71]

When Hemphill Pride returned to his room, he immediately received a phone call from John Shorter who told him that William Borders had been arrested on charges involving bribery in Judge Hastings' courtroom. Shorter also told Pride that the FBI was looking for Judge Hastings to interview him, and he gave Pride the names of the two FBI agents and the FBI telephone number. Shorter asked Pride to give the message to Judge Hastings and to tell him to contact the agents. Shorter thought that Judge Hastings should have a lawyer present and suggested the name of a Washington attorney.[72]

Pride immediately called Judge Hastings and told him he had an important message and that Judge Hastings should come to Pride's room immediately. Taking his two-year old son with him, Pride met Judge Hastings outside the elevator on Pride's floor of the hotel. There Pride relayed Shorter's information. Judge Hastings was stunned and shocked by the news. He did not, however, express

---

[71] 691-92, 734, 2263-65.

[72] 689-94, 724.

outrage or anger at William Borders for involving him in a bribery scheme.[73]

After relaying the news, Pride and Judge Hastings decided to return to Judge Hastings' room. They took Pride's child back to Pride's room and took the elevator together. In the elevator they did not discuss Borders' arrest because other people were present; however, upon reaching Judge Hastings' room, they continued to discuss the situation. Judge Hastings kept asking Pride to repeat the information. Pride did so and also told Judge Hastings that if he had a problem he could best handle the matter in Florida with his own counsel. Judge Hastings immediately packed his clothes. He and Pride then went downstairs to the lobby of the L'Enfant Plaza Hotel.[74]

In the lobby, Pride offered to give Judge Hastings a ride to the airport; but, Judge Hastings declined, saying that Pride should not get involved because Pride was still on parole and that he would take a cab. The two men then parted. At no time did Judge Hastings give Pride money to cover any charges that Judge Hastings had incurred while at the hotel. Nor did Judge Hastings ask Pride to pick up the suit Judge Hastings had sent to the valet service. Judge Hastings left the L'Enfant Plaza on October 9, 1981, without

---

[73] 693-94, 696, 2265-66, 2351-52, 2458-59.

[74] 694-96, 725-26, 2265-67, 2351.

checking out, without paying his expenses, and without picking up his suit.[75]

Judge Hastings testified at his criminal trial and before the Impeachment Trial Committee that after learning of Borders' arrest from Pride, he returned alone to his room and telephoned his mother and his fiancee, Patricia Williams, in Florida. He testified that it was because of these calls that he decided to return home immediately. According to Judge Hastings, when he called his mother long distance from his hotel room, she said she had learned about William Borders' arrest and that reporters were at their apartment complex. She allegedly was hysterical and told him to "come home." Judge Hastings also testified that he called Ms. Williams who told him that she had been interviewed by the FBI and that she had called his chambers and learned the FBI was interviewing his staff. According to Judge Hastings, Pride joined him after these calls.[76]

These calls, however, were never made. Hemphill Pride testified that from the time he informed the judge of William Borders' arrest until the time they parted in the lobby of the L'Enfant Plaza Hotel, Judge Hastings was never out of his presence and the judge made no phone calls. The computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981, does not reflect the calls Judge Hastings claims he made to his mother and Ms. Williams, and there is no evidence

---

[75] 695-96, 749, 830, 2265-67, 2358-59.

[76] 696-97, 2351-52, 2355-58; HX. 156 (at 1916).

of a malfunction in the system. Neither the telephone records of Judge Hastings' home phone, his mother's home phone nor Patricia Williams' home phone reflect the alleged calls. And, Judge Hastings admits that he did not charge the calls to a credit card.

There is also evidence that Judge Hastings could not have obtained the information he claims from his mother and Ms. Williams at the time he alleges to have made the calls. For example, during the relevant time period, no media people were signed in on the log of the condominium complex where Judge Hastings and his mother lived. The log must be signed in order to gain access to the complex.[77]

On the afternoon of October 9, 1981, the FBI office in Washington, D.C. advised FBI personnel in Miami to begin interviews at Judge Hastings' chambers. The agents arrived at about 2:50 p.m. and remained for approximately two and one half hours. The Miami office of the FBI also received instructions to interview Ms. Williams, Judge Hastings' fiancee. FBI agents arrived at her office a few minutes before 3:00 p.m. and began the interview shortly thereafter. Ms. Williams was interviewed by FBI agents for approximately 45 minutes. She was interrupted once by a phone call and stated to the agents upon her return that the call was from a client. The call was not from Judge Hastings.[78]

---

[77] 696-97, 751, 812-13, 830-31, 2351-52, 2352-53, 2357-58; HXs. 31, 136, 137, 140, 156; S.175.

[78] 758-59, 763-65, 804; HX. 139.

The evidence indicates that Judge Hastings departed from the L'Enfant Plaza Hotel within 30 to 40 minutes of the time he learned of William Borders' arrest, at approximately 3:35 or 3:40 p.m. Airline records establish that Judge Hastings could have taken a direct flight that afternoon from Washington, D.C. to Miami, where his car was parked. There were 14 seats available on a flight, leaving National at 4:35 p.m. However, instead of traveling to National, which is located four miles from the L'Enfant Plaza Hotel, Judge Hastings went by taxi -- at a cost of $50 -- to BWI, which is 32 miles northeast of the hotel and approximately an hour away in Friday afternoon traffic.[79]

At 4:37 p.m., Judge Hastings called his mother from a pay phone at BWI and spoke for four minutes, charging the call to his home telephone. This is the first documented contact between the judge and his mother that day. At 5:06 p.m., he called Patricia Williams from a BWI pay phone, also charging the call to his home telephone. This is the first documented call from Judge Hastings to Ms. Williams that day. He spoke to her for one minute and told her to call him back at a different pay phone. When she called back at 5:07 p.m. from her home, Judge Hastings told her to go outside, find a pay telephone and call him back. She did so, calling him at 5:22 p.m. He then took her number, moved to a third pay phone and called her again. Judge Hastings admits that he engaged in this series of pay phone calls. He testified to several

---

[79] 329-30, 694-95, 724-25, 752, 2266-67, 2352, 2360-61; HX. 78; S.181-84, S.186.

explanations for this conduct -- a baby was crying; he suspected government surveillance near the pay phone; he was afraid Ms. Williams' phone was tapped. He denied, however, that he went to BWI because he was trying to avoid any FBI agents who might be waiting for him at National.[80]

Delta Airline records show that at 5:31 p.m. Judge Hastings made a reservation on a flight departing BWI at 6:30 p.m. for Miami with an intermediate stop in Fort Lauderdale. There is a handwritten notation on Judge Hastings' ticket crossing out Fort Lauderdale as his destination and substituting Miami. However, Judge Hastings got off the plane when it stopped in Fort Lauderdale. At the Fort Lauderdale airport, Judge Hastings rented a car because he had parked his car at the Miami airport when he had left the Florida area.[81]

Judge Hastings testified at his criminal trial and before the Impeachment Trial Committee that upon arrival in Fort Lauderdale, he went to his mother's house and then proceeded to the home of Ms. Williams. In his FBI interview that very night, however, he stated that he called his mother from the airport and drove directly to the home of Ms. Williams.[82]

During the evening of October 9, Special Agent John Simmons had received a call at home from the Special Agent in Charge of the Miami Division of the FBI, advising him that Judge Hastings had not

---

[80] 2362-63, 2399-400; S.186-89, S.191.

[81] 2361, 2364; HXs. 134-35; S.183, S.192-95.

[82] 2364, Respondent's Exhibit (hereinafter "RX.") 42.

been located in Washington, D.C. Special Agent Simmons was asked to contact another experienced agent and attempt to find Judge Hastings in the Ft. Lauderdale area.[83]

The first step Special Agent Simmons and his partner took was to go to Judge Hastings' home, which he shared with his mother. They arrived at approximately 11:00 p.m. and spoke to Mrs. Hastings. She told them that she had not seen her son that day, nor had she heard from him. The agents asked Mrs. Hastings to have the judge contact the Miami FBI office if she did see or hear from him.[84]

Special Agent Simmons and his partner then went to the home of Patricia Williams, who they knew was Judge Hastings' fiancee. There they found Judge Hastings. The agents arrived at about midnight and were invited in by the judge, who stated, "Gentlemen, I've been expecting you. Come on in."[85]

Prior to his interview at Patricia Williams' home late in the evening on October 9, 1981, Judge Hastings had not contacted the FBI. During the interview, he denied any involvement with William Borders in a bribery scheme. With respect to his abrupt departure from Washington, D.C., Judge Hastings said he came home because he believed he could better defend himself against allegations while on "his own turf." He did not mention any telephone calls he made from the L'Enfant Plaza Hotel to his mother and Patricia Williams.

---

[83] 767.

[84] 767-68; S.198.

[85] 768.

It was the impression of Agent Simmons, who conducted the interview, that Judge Hastings answered every question immediately and spoke as if he had rehearsed his answers.[86]

On Monday, October 12, 1981, three days after William Borders' arrest, at 6:38 p.m., a telephone call was placed from Judge Hastings' home telephone to William Borders' home telephone. The call lasted two minutes.[87]

Two days later, on October 14, 1981, Ms. Williams wrote to Judge Hastings and told him that she felt "pride and joy as well as horror" as a result of their telephone conversation on Friday, October 9, when Judge Hastings called her "from Baltimore" and indicated that he wanted her legal assistance in confronting allegations of bribery which Judge Hastings had just learned were being directed against him.[88]

5. Contacts Between Judge Hastings and William Borders

Throughout 1981, as the Romano case proceeded and during the Government's investigation of the bribery scheme, there were numerous contacts between Judge Hastings and William Borders, which correspond to key events in the Romano case. The contacts are documented by telephone and airline records, message logs and by Judge Hastings' own testimony. The contacts were often of brief

---

[86] 768-69, 792, 2355, 2358-59, 2363-64; RX.42; S.196.

[87] 2271-72, 2392-93; HX. 31; S.201.

[88] 2355; HX. 230.

duration, sometimes at odd hours and on at least one occasion from and to pay telephones.

Analysis of these contacts reveals that most of the known telephone calls between Judge Hastings and William Borders occurred on or close to days on which (a) Judge Hastings had motions in the Romano case under active consideration, (b) he held hearings relating to the Romanos' forfeiture or sentencing, or (c) William Borders was negotiating with H. Paul Rico about the payment of a bribe. Moreover, there were only eight other telephone contacts between Judge Hastings and Borders from January through October, 1981.

The significant contacts are as follows:

1. On February 20, 1981, the day of the Romanos' forfeiture hearing, Judge Hastings called Borders early in the morning. The call lasted three minutes.[89]

2. On April 9, 1981, the day after the last memoranda relating to the forfeiture issue were filed, Judge Hastings called Borders' office. He left a message for Borders to call and said he would be "at his office between 12 and 1." At 12:15 p.m. a call was placed from a pay phone in the corridor of the third floor of the Federal courthouse in Miami, (125 feet from Judge Hastings' chambers) to a pay phone in the lobby of the Federal courthouse in Washington, D.C. The call lasted one minute or less and was charged to Judge Hastings' residence. Judge Hastings does not deny he made the call. He also testified that it might have been the result of instructions by Borders to use a pay telephone. The call was made within a day or two of when Philip "Brother" Moscato relayed Borders' message to the Romanos that there was a Washington, D.C. lawyer who could help them with their case.[90]

---

[89] S.269.

[90] 197, 523-25; HXs. 31i, 198, 200, 200a, 201, 222; S.271-72.

3. Judge Hastings called Borders three times within a few days of April 23, 1981, the date the parties were advised the Romanos' sentencing was scheduled for May 11, 1981.[91]

4. On May 4, 1981, the day Judge Hastings entered his order compelling the forfeiture of $1,162,016 of Romano property, he called Borders during a morning recess and left an "urgent" message that he would be awaiting Borders' call between 12:00 and 1:00 p.m.[92]

5. The next day, May 5, 1981, Borders flew to Miami, arriving at 3:58 p.m. He was scheduled to depart at 6:50 p.m. The same day, Judge Hastings was scheduled to depart Miami at 6:55 p.m. Both were departing from the Eastern Airlines terminal of the Miami airport.[93]

6. Judge Hastings called Borders four times between May 5 and the scheduled time of the Romanos' sentencing on May 11, 1981: once after midnight on May 6 from Madison, New Jersey; once on May 7 at 4:30 p.m. when Judge Hastings left a message for Borders to call him at 7:00 a.m. the next morning; and twice before 7:00 a.m. on May 11. Two of the calls (on May 7 and May 11) were to the home of Borders' girlfriend. On May 11, Judge Hastings postponed sentencing.[94]

7. On May 31, 1981, Borders called Judge Hastings twice: at 7:53 a.m. and 8:27 a.m. The day before, William Dredge had been in Washington, D.C. The day after the calls, the Romanos' sentencing was rescheduled for July 8, 1981.[95]

8. Judge Hastings sentenced the Romanos on July 8, 1981. On July 5, 7 and 9, Judge Hastings called Borders. The July 5 and 7 calls each lasted less than one minute. On July 9, Judge Hastings left a message for Borders. Between July 7 and 9, Dredge was in Washington, D.C. and overheard conversations about a bribery

---

[91] HXs. 212-14; S.277-78.

[92] S.279.

[93] HXs. 90-91, 93, 98, 106-07; PT Laverne Boone at 474-76, 482, 484-94.

[94] 843-46, 2346; HXs. 4, 31h, 197, 215; S.19, S.280; PT of Madeline Petty at 879.

[95] HX. 196b.

deal involving Santo Trafficante. The following weekend Borders met Judge Hastings in Miami.[96]

9. During late August and early September, 1981, William Dredge told Borders that the Romanos might be interested in a deal. On August 31, 1981, at 5:42 p.m., Dredge called Borders. On September 1, 1981, at 11:36 a.m., Borders called Judge Hastings.[97]

10. On September 10, 1981, the same day that Dredge and Borders arranged the first meeting with "Frank Romano," there was a series of calls between Borders and Judge Hastings. The calls occurred both before and after Dredge and Borders arranged the meeting.[98]

11. On September 11, 1981, the day before Borders was to meet Rico for the first time, Judge Hastings called Borders twice to tell him his flight was delayed. There was an hour and 15 minute period during which Judge Hastings and Borders could have met at National because Borders had delayed his flight to Miami.[99]

12. On September 12, 1981, after meeting for the first time with Rico and setting up the bribery deal, Borders went to great lengths to return to Washington, D.C. and arrived at Judge Hastings' Sheraton Hotel room sometime after 10:00 p.m.[100]

13. On September 20 or 21, 1981, Borders called Judge Hastings, one or two days after the upfront payment on the bribe of $25,000 was paid to Borders by Rico on September 19.[101]

14. On October 2, 1981, after telling Rico that he would check on the promised order vacating the forfeiture order, Borders called Judge Hastings' chambers and asked to speak with the judge.[102]

15. On Sunday, October 4, 1981, the day Borders told Rico that he had not been able to reach anyone about the order, Borders

---

[96] 87-91, 1459-60, 2231; HXs. 110, 156 (at 2090-92), 205; S.25, S.284-86.

[97] 94, 251; HXs. 11d, 27b.

[98] HX. 28; S.35-38.

[99] 2240; HXs. 31d, 32; S.41.

[100] HXs. 31d, 32-35; S.41-42, S.44.

[101] 2376; S.288.

[102] HXs. 51a-b; S.107.

called Judge Hastings' residence and left a message for the judge to call.[103]

16. On October 5, 1981, Judge Hastings told his law clerk to get the Romano order out that day. At 5:12 p.m. the same day, Judge Hastings called Borders and had the coded conversation.[104]

17. On October 8, 1981, Judge Hastings called Borders and arranged to stay at the same hotel when he came to Washington, D.C. on October 9, 1981. October 9 was the day Rico was to make the final payment on the bribe.[105]

18. On October 9, 1981, William Borders picked Judge Hastings up at the airport. They spent the morning together. Around noon, Borders left Judge Hastings in order to meet Rico for the final payment of the bribe.[106]

19. Three days after Borders' arrest, on October 12, 1981, a call was placed from Judge Hastings' home phone to Borders' home phone. The call lasted two minutes.[107]

6. Pre-trial and Trial Proceedings

Following William Borders' arrest on October 9, 1981, a grand jury in the Southern District of Florida began hearing evidence on the bribery conspiracy. On December 29, 1981, the grand jury returned an indictment against Borders and Judge Hastings, charging both men with conspiracy and obstruction of justice. Borders was also charged with two counts of interstate travel to carry out the bribery scheme.[108]

---

[103] 2252-53; HX. 156 (at 1846); S.109.

[104] HXs. 54a-b; S.117.

[105] HXs. 61a-b; S.126.

[106] 2261-64.

[107] 2271-72, 2392-93; HX. 31; S.201.

[108] S.202-04.

On January 4, 1982, the case was assigned to Judge Edward T. Gignoux, then Chief Judge of the United States District Court for the District of Maine, sitting by designation. He ordered reciprocal discovery, which called for each of the parties to produce for the other side those documents it intended to rely upon at trial. The prosecution produced its documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and Borders. Therefore, as Judge Hastings admits, at least as early as January, 1981, the judge was aware that the subject of the October 5, 1981, taped conversation, purportedly the "letters for Hemp", was critical to his defense.[109]

Judge Hastings produced his reciprocal discovery on February 12, 1982. At that time, he did not produce any letters or drafts of letters about or to Hemphill Pride.[110]

In January, 1982, at the request of William Borders, Hemphill Pride met with John Shorter, Borders' attorney. At that meeting, Shorter asked Pride to listen to the October 5, 1981 tape recording and to read the transcript. Shorter did not explain where or when the conversation took place. Pride did as asked and during the third time listening to the tape, he discovered that the tape referred to "Hemp," where the transcript read "him." Pride then

---

[109] 892, 2385-86; HXs. 150-51; S.205, S.207.

[110] 2386; HX. 152; S.208-09.

realized that the taped conversation had to do with writing "letters for Hemp."[111]

After making this discovery, Pride told John Shorter that he was not going to be part of any defense or plan that involved the writing of letters.[112]

In late January, 1982, following his meeting with John Shorter, Hemphill Pride met with Judge Hastings in Columbia, South Carolina at Judge Hastings' request. Judge Hastings' principal attorney at that time, Joel Hirschhorn, was concerned about his client meeting alone with Pride and therefore arranged for a local attorney, Jack Swerling, to attend the session. During the meeting there was no discussion of the "letters for Hemp" referred to in the October 5, 1981 conversation.[113]

When the conference concluded, Pride insisted on driving Judge Hastings to the airport. During that trip, Pride asked the judge about the letters he had heard referred to in the October 5 taped conversation. Judge Hastings told Pride it was important for Pride to recall that the judge was drafting letters of support for him. When Pride told the judge that he knew of no such letters and, if he had, he would have stopped the effort, Judge Hastings replied that Pride would not have had to know about it. Judge Hastings tried to convince Pride that his and Borders' efforts were legitimate. Pride refused to endorse Judge Hastings' suggestion

---

[111] 697-99; HX. 127.

[112] 717-18.

[113] 700-01, 703, 2297.

and disavowed any connection with the letters of support. He told Judge Hastings that the letter writing defense was not "going to fly."[114]

Hemphill Pride unequivocally testified before the Impeachment Trial Committee that, in 1981, neither Judge Hastings nor William Borders offered letters in support of Pride's reinstatement to the South Carolina bar or to obtain financial assistance. The men had not obtained Pride's permission to write such letters, they had never discussed with Pride any letters, nor had Pride requested or solicited such letters from Judge Hastings or William Borders. Moreover, Pride testified that he never wrote "some things down" for Borders as referred to in the October 5, 1981 conversation between Judge Hastings and Borders, nor was Borders supposed to "go back and get some more things."[115]

Hemphill Pride also unequivocally testified that he would not have wanted letters of support from persons outside of South Carolina. He felt that his indefinite suspension from the South Carolina bar was a local problem, which he had under control. In 1981, Pride had begun taking steps to mend fences with South Carolina judges whom he had offended, and he believed that outside letters would have hurt rather than helped his cause.[116]

On February 1, 1982, Judge Hastings filed suit to enjoin his criminal case on the ground that a sitting Federal judge had to be

---

[114] 702, 718-21, 729-31.

[115] 681-82, 705-06, 718.

[116] 682, 717-18.

impeached before a criminal prosecution could proceed. Although his position was eventually rejected,[117] Judge Hastings' case was stayed pending the outcome of the litigation, thereby prompting Judge Gignoux to sever Judge Hastings' trial from that of William Borders.[118]

Borders was tried in Atlanta, Georgia, from March 22 until March 29, 1982. Neither Borders nor Judge Hastings testified. One of Judge Hastings' defense counsel, however, did attend the trial, thereby enabling the judge to gain a preview of the Government's evidence against him. Borders was convicted on all counts.[119]

Following the Court of Appeals' rejection of his challenge to the prosecution, Judge Hastings' case was set for trial. Approximately one month before trial, on December 13, 1982, Judge Hastings (now represented only by himself and Patricia Williams) for the first time disclosed to the prosecution the "letters for Hemp," which consisted of three yellow legal pad sheets, comprising three handwritten letters, one addressed to Hemphill Pride, and the other two addressed generally to friends and supporters from whom Judge Hastings was requesting either financial assistance for Pride or letters of support to be sent to the South Carolina Supreme

---

[117] United States v. Hastings, 681 F.2d 706 (11th Cir. 1982).

[118] S.212-13.

[119] 2306; S.215, S.218.

Court, to be used to assist Pride in gaining readmission to the South Carolina bar.[120]

The prosecution submitted the letters to forensic experts in an attempt to date the creation of the letters. None of the forensic experts could date the drafts. The paper and ink employed were such that it was impossible to conclude when the letters were written. Likewise, tests to reveal impressions on the paper other than the visible writing revealed nothing that could date the letters.[121]

Judge Hastings' criminal trial, conducted in Miami, Florida, began on January 19, 1983 and continued for 12 days. Judge Hastings took the stand as the final witness in his defense. In an effort to obtain an acquittal, Judge Hastings knowingly testified falsely about the events detailed above in 14 different instances.[122]

Three times Judge Hastings unequivocally denied that he participated in a conspiracy with William Borders:

1. Judge Hastings testified that he and Borders did not agree to solicit a bribe from the Romanos.

2. Judge Hastings testified that he and Borders did not agree that Judge Hastings would modify the Romanos' sentences from a prison term to probation in exchange for the bribe.

---

[120] 900, 2309, 2387-88; HXs. 148, 153-54; S.219-20.

[121] 922-23, 925-26; HXs. 145, 147.

[122] 715, 892-94, 1482-83, 2355, 2389-92; HXs. 27a, 137 (at 221), 148, 156 (at 1841, 1846, 1848-50, 1854, 1914-16, 1922-24, 1969, 2009, 2033, 2047-52, 2057-58, 2107-08, 2111, 2139, 2180, 2182, 2185, 2187-88, 2216, 2224), 210, 211, 230; S.225, S.228; PT of Andrew Chisholm at 970-71, 978, PT of Carolyn McIver at 931-32, 949-50, PT of Eleanor-Golar Williams at 1003, 1007.

3. Judge Hastings testified that he and Borders had never agreed that Judge Hastings would set aside the May 4, 1981 forfeiture order after a payment on the bribe.[123]

Eleven times, Judge Hastings knowingly lied under oath about particular evidence in an attempt to hide from the jury his participation in the bribery scheme. Judge Hastings testified as follows:

1. He was surprised by Borders' arrival at his room at the Sheraton Hotel on September 12, 1981.[124]

2. He expected to meet Borders at the Fontainebleau Hotel on September 16, 1981.[125]

3. On October 5, 1981, he told his law clerk to prepare the order in the Romano case primarily because the law clerk would be leaving his employment shortly.[126]

4. His October 5, 1981, telephone conversation with William Borders was about writing letters for Hemphill Pride rather than about the conspiracy to solicit a bribe in the Romano case.[127]

5. The "letters for Hemp" were written on October 5, 1981.[128]

6. On May 5, 1981, he talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.[129]

---

[123] HX. 156 (at 2058, 2107-08).

[124] HX. 156 (at 1841, 2111).

[125] HX. 156 (at 2009, 2057).

[126] HX. 156 (at 1969, 2139).

[127] HX. 156 (at 1846, 1848-50, 1854, 2180, 2182, 2185, 2187-88).

[128] HX. 156 (at 1854).

[129] HX. 156 (at 2048-49).

7. On August 2, 1981, he talked to Hemphill Pride by placing a telephone call to 803-782-9387 in Columbia, South Carolina.[130]

8. On September 2, 1981, he talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.[131]

9. The telephone number 803-777-7716 was a number at which Hemphill Pride could be reached in July, 1981.[132]

10. On the afternoon of October 9, 1981, he called his mother and Patricia Williams from his room at the L'Enfant Plaza Hotel, and the information he learned from those phone calls was why he left Washington, D.C.[133]

11. He took a plane from BWI rather than National because he did not think there were direct flights to Miami from National at that time.[134]

On February 4, 1983, the jury acquitted Judge Hastings of the criminal charges. That acquittal, however, was obtained by fraud. The impact of the jury verdict on this impeachment proceeding is discussed in the concluding section of this memorandum.

---

[130] HX. 156 (at 2051-52).

[131] HX. 156 (at 2048-49).

[132] HX. 156 (at 2033).

[133] HX. 156 (at 1914-16, 2216).

[134] HX. 156 (at 1922-24, 2224).

B. ARGUMENT: ARTICLE I

From some time in the first half of 1981 and continuing through October 9, 1981, Judge Hastings and William Borders, then a Washington, D.C. attorney, engaged in a corrupt conspiracy to obtain $150,000 from defendants in United States v. Romano, a case tried before Judge Hastings, in return for the imposition of sentences which would not require incarceration of the defendants.

Wherefore Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

The House of Representatives submits that the evidence overwhelmingly supports Article I of the Articles of Impeachment: Judge Hastings conspired with William Borders to obtain a $150,000 bribe from the Romano brothers in exchange for the imposition of non-prison sentences. This conspiracy began as early as March of 1981 when William Borders approached William Dredge in an attempt to learn the reputations of the Romanos, and continued through October 9, 1981, when Judge Hastings fled Washington, D.C. after learning of Borders' arrest. At each stage of the conspiracy there is significant evidence of Judge Hastings' complicity which cannot be explained away.

That William Borders was involved in a scheme to obtain $150,000 from the person he believed to be Frank Romano is beyond dispute. Borders' conduct and conversations in furtherance of the scheme were observed and recorded by the FBI. The issue before the Senate is whether Judge Hastings was in on the deal. The House submits that the evidence overwhelmingly establishes that indeed the judge was a co-conspirator.

1. Pattern of Contacts

The initial evidence that incriminates Judge Hastings is the repeated, documented contacts between the judge and William Borders which correlate precisely with key events in both the Romano case and the bribery deal. For example, the day after Dredge tells Borders that the Romanos are interested (documented by a call from Dredge to Borders on August 31), Borders calls Judge Hastings. On the very day Borders and Dredge set up the first meeting with Rico, there is a series of calls between Borders and the judge. When Borders and Rico actually meet and set up the deal, within hours Judge Hastings and Borders are together. And, when Rico asks after the Romano order, Borders immediately contacts the judge. These are only some of the incriminating contacts between the two men. In 1981, nearly all of the documented contacts between Judge Hastings and William Borders occur around significant events in the Romano case and the bribery conspiracy.

The Statement of Facts above includes a list of the contacts between Judge Hastings and Borders that raise more than a mere suspicion about the role Judge Hastings played in the bribery scheme. In addition, the House has attached to this memorandum, as Attachment A, its Master Chronology, which graphically illustrates the correlation between events in the Romano case, events of the bribery conspiracy and Judge Hastings' and Borders' conduct throughout the relevant time period. The House submits that the Master Chronology damages Judge Hastings beyond repair.

It undermines Judge Hastings' assertion that he is innocent. It plainly demonstrates that the judge was a knowing participant with William Borders in the bribery scheme.[135]

Judge Hastings attempts to explain away the incriminating contacts by giving after-the-fact explanations that are wholly unpersuasive and at times implausible. For example, he testified before the Impeachment Trial Committee that <u>every</u> time he spoke to William Borders in 1981, they discussed Hemphill Pride.[136] Yet, not once between February and October, 1981, when all the telephone calls occur, did Judge Hastings or Borders take any concerted action to help their friend Pride. According to the judge, in many of the calls, Borders was pestering him to write letters in Pride's support.[137] Yet, not until October 5 -- eight months after the calls began -- are the letters allegedly written and even then the judge fails to send them out. In short, Judge Hastings' own actions belie his feeble explanation that Hemphill Pride was the reason he and Borders were repeatedly in contact.

---

[135] Because of the enormous number of contacts between Judge Hastings and William Borders in September and October, 1981 (at the very time the bribery deal was actually under way), the House was unable to include on the Master Chronology all of the relevant contacts and events. For a complete listing of the September and October entries, the House refers each Senator to HXs. 1b and c, attached hereto as Attachments B and C, which are charts devoted to those crucial months.

Although the Master Chronology is not a part of the Impeachment Trial Committee record, the Committee ruled that the House may use this document in its post trial brief. 1799.

[136] 2236, 2384.

[137] 2236.

Knowing that this explanation does not wash, the judge goes on to provide other reasons why he and Borders were so closely allied. He emphasizes that they were both members of the National Bar Association and, therefore, had spoken about upcoming events. But the problem with this explanation is that, as explained by one of Judge Hastings' own witnesses, Judge Henry Latimer, the section of the NBA to which Judge Hastings belonged (the Judicial Council) is an autonomous section of the organization, responsible for putting on its own programs and social functions. As President of the NBA, William Borders would not have regular interaction with the judges who are active in the Judicial Council.[138]

Moreover, even if Judge Hastings and Borders were in contact about NBA events, those events fall far short of explaining away all their contacts. The judge only offers three NBA events -- in February, May and July, 1981 -- which fail to explain all the other significant telephone calls throughout the rest of the year (especially those in September and October). Moreover, in contrast to the Romano events, the dates of the NBA events do not closely correspond to the calls made in those early months.[139] In addition, Judge Hastings gives no explanation with respect to why his

---

[138] 1714-15.

[139] Moreover, the judge fails to provide any documentary evidence in support of his self-serving claim that there was a May NBA meeting attended by Borders.

messages for Borders would be "urgent", if only a NBA matter was on his mind.[140]

The same is true with respect to Judge Hastings' other explanations. He uses a court case that Borders filed against President Reagan to explain their contacts, especially the three phone calls immediately before and after the Romanos' sentencing on July 8. Specifically, he alleges that Borders won his case on July 7, which is why they were in telephone contact on July 5 (at 8:58 p.m.) and July 7 (at 11:56 a.m.). Again, however, Judge Hastings' explanation is far from compelling. Nowhere in the record is there any evidence that either the judge or Borders knew that the Court would rule in Borders' case on July 7. Thus, Judge Hastings' explanation does not even address the two calls he made to Borders before July 8. Rather, it is clear that the purpose of these calls had to do with a strategy to induce the Romanos to accept the offer of a deal.

The pattern of contacts between Judge Hastings and William Borders must be viewed in context. The two men had few other contacts besides those that correlate with the key events in the Romano case and the bribery conspiracy. These men would meet or telephone one another only for a specific purpose. The House

---

[140] For example, with respect to the "urgent" message Judge Hastings left for Borders on May 4, 1981, the very day he issued the initial order forfeiting over a $1 million of Romano property, the judge introduced evidence that on April 21 he sent Borders a letter making a recommendation for the NBA annual meeting to be held in July. He gives no explanation as to why it was so urgent for him to speak to Borders about his proposal so far in advance. Nor does the date of his proposal correspond with the telephone contact.

submits that this purpose was to plot the selling of Judge Hastings' power over criminal defendants.

As detailed in the Statement of Facts and Master Chronology, the indisputable pattern of contacts between Judge Hastings and William Borders raises a significant inference that the judge conspired with Borders to obtain a bribe. The contacts set the stage for the analysis of all the other incriminating evidence. When added to Judge Hastings' own incriminating conduct, the pattern of contacts leaves little doubt that Judge Hastings is guilty as charged.

2. Three Separate Times Borders Offered Proof of Judge Hastings' Involvement. Three Separate Times Judge Hastings Complied.

In reviewing the evidence of Judge Hastings' complicity in the bribery scheme, it is also helpful to carefully consider the promises that William Borders made as proof that the judge was an active participant. Borders made three separate "offers of proof" for the purpose of persuading the Romanos that he could control Judge Hastings. In each instance Judge Hastings took the promised action. Each offer of proof involved actions that only the judge could take. In each case the promised conduct was not the subject of public knowledge. And, in each case the only reasonable explanation of Borders' ability to accurately predict the judge's conduct is that Judge Hastings was actively participating in the conspiracy. Moreover, Judge Hastings' attempts to explain away his incriminating conduct consistent with the offers of proof are incredible.

a. The May 11 Continuance.

The first offer of proof that Judge Hastings was in on the deal was made by William Borders to William Dredge in May of 1981. At that point Borders had been talking to Dredge for over a month about the Romano case. Dredge had been stringing Borders along with various excuses -- telling him that the Romanos were not interested, or they did not have the money, or they had some other contact with the judge. Borders was infuriated by suggestions that someone else could control Judge Hastings. Finally, on the morning of May 10, 1981, Borders told Dredge that the judge was going to give the Romanos one last chance to take advantage of the bribery deal. Borders promised that Judge Hastings would continue the sentencing scheduled for the next day. And, in fact, the sentencing was continued.

Judge Hastings does not deny that Borders may have told Dredge that a sentencing in the Romano case would be continued. But he belittles the significance of this continuance on three grounds: 1) Dredge was wrong about the date and was, in fact, referring to the July 8 hearing, which, of course, was not continued; 2) the crux of the proof was that the judge would grant this continuance sua sponte when, in fact, the continuance was granted at the request of defense counsel; and 3) the judge could not have passed this information to Borders because he had not known in advance that the Romanos would request a continuance.

On the first point Judge Hastings argues that Dredge did not meet Borders until early May and, therefore, Dredge must have been

referring to the July sentencing. The evidence, however, establishes that Dredge met Borders early in the spring of 1981. Dredge has testified to that effect. In Borders' appointment book Dredge's number is found in the space for the week of March 30.[141] And the contacts with the Romanos, which Dredge says he made through Phillip "Brother" Moscato, are corroborated by the testimony of Neal Sonnett that in the second week of April the Romanos reported to him that through Moscato they learned that a Washington attorney could help them with their case.[142] Further, Dredge had good reason to remember the date on which he spoke to Borders about the sentencing. May 10, 1981, was the day that he was arrested on the pending Baltimore drug charges.

On the second point, although it may have been important to Dredge that the judge was going to grant a continuance on his own motion, that point is of no moment in assessing the significance of Borders' promise that the sentencing would be continued. The important fact is that Borders had any information at all about the postponement of the Romanos' sentencing. There had been no formal request for a continuance; there was no filing of a written motion for a continuance as required by the rules; the fact that a continuance was being considered was not public information. The persons other than the judge who would have reason to know about a possible postponement -- Neal Sonnett, members of his firm and

---

[141] HX. 67.

[142] Indeed, Sonnett's memorandum about the calls he received from the Romanos in this regard is dated April 16, 1981. See HX. 25.

staff, and the judge's staff -- have all testified that they did not provide any information to William Borders concerning that matter. And the judge has suggested no reason why those persons should not be believed.

Further, Neal Sonnett may have orally notified chambers of his desire for a continuance by the close of business on May 8, 1981, which in turn would have given Judge Hastings notice in time to inform Borders. The testimony on this point is inconclusive. But whether Neal Sonnett had conveyed his plans to the court is not determinative. For Judge Hastings might well have planned to grant a continuance sua sponte, the need for which was obviated by the defense request at the time of the sentencing. In either case, the important fact is that Judge Hastings decided in advance of the hearing that there would be a postponement of the sentencing and he shared that information with William Borders.

Finally Judge Hastings' conduct at the beginning of the May 11 hearing confirms his intention to continue the Romanos' sentencing as part of the bribery conspiracy. Logic would dictate that the outstanding motions -- including a motion for a new trial and a motion for judgement of acquittal -- would be argued and decided first, for if either of them were granted, there would be no sentencing. Judge Hastings, however, took the bench and proceeded immediately to sentencing, asking counsel to step forward and present their arguments of mitigation or aggravation on behalf

of either or both of the Romanos.[143] This conduct by Judge Hastings is the exact opposite of what one would expect if the hearing were in fact to go forward. In short, Borders told Dredge that Judge Hastings would postpone sentencing in order to give the Romanos a message. Judge Hastings acted as promised.

b. The September 16 "show" at the Fontainebleau.

The next two offers of proof that Judge Hastings was an active player in the bribery scheme were made when William Borders met H. Paul Rico for the first time at the Miami International Airport on September 12, 1981. When discussing the terms of the bribery deal, Borders proposed that the issuance of an order returning some of the previously forfeited property of the Romanos would serve as proof that the judge was "on board". This proof would be provided after an upfront payment on the bribe. Then Borders and Rico agreed that before any money was paid, Borders would provide proof of his control of Judge Hastings by having him appear on a certain date at a time and place to be named by Rico. As with the May continuance, the promises made by Borders were of actions which only the judge could take and concerned conduct which was not the subject of public knowledge. Again, Judge Hastings performed as promised, proving his involvement in the bribery conspiracy.

With respect to the "show" by Judge Hastings, Rico was the one who suggested that Borders have the judge appear at a given place and time. Rico asked Borders if he needed to get back to him to let him know when the judge would be available. But Borders

---

[143] HX. 4.

did not need to check with the judge. Borders said they could set it up right then and he immediately chose the following Wednesday, September 16 -- the day of the championship fight. Rico then chose the main dining room of the Fontainebleau Hotel at 8:00 p.m.

William Borders was able instantaneously to select a date for Judge Hastings' appearance at the Fontainebleau Hotel because he and the judge had previously discussed the possibility of providing such proof. Indeed, given Judge Hastings' heavy travel schedule, it would have been foolhardy for Borders to make such a promise without knowing the judge's availability. Borders knew the extent of the judge's travel. He even commented in a later recorded conversation when Judge Hastings called from Albany, Georgia, "Goddamn, you move around, man."[144] Borders picked September 16 for the night of the "show" because he had already cleared the date with Judge Hastings.[145]

The House submits that Judge Hastings met with Borders to discuss this and other aspects of the bribery scheme at National Airport the night before Borders first met with Rico. Judge Hastings denies any such meeting, but the facts supporting such a conclusion are overwhelming: 1) the original juxtaposition of their travel plans so that there was an hour and a half overlap between

---

[144] HXs. 61a-b.

[145] Judge Hastings' explanation that Borders might have based his promise to Rico on the fact that Judge Hastings had already agreed to meet Borders for dinner on September 16 makes no sense. According to Judge Hastings' own testimony, Borders did not ask him to dinner until <u>after</u> Borders' September 12 meeting with Rico. 2246.

the time Judge Hastings was to arrive and the time William Borders was to leave; 2) the judge's two calls to William Borders to advise him of the delay of the flight; 3) William Borders' decision to take a 9:30 p.m. flight instead of the 7:30 p.m. flight on which he had reservations, providing once again an hour and a half overlap between the time Judge Hastings was to arrive at National and William Borders' departure; and 4) the over two hour delay between the time the judge arrived at National and his check-in at the Sheraton Hotel.

Judge Hastings testified that he advised Borders of his delay because Borders was supposed to pick him up at the airport. But this claim does not make sense. Why would Borders agree to pick up Judge Hastings at 6:00 p.m. and drive him to his hotel, when Borders was himself scheduled to leave from National less than an hour and a half later? And certainly, upon learning from Judge Hastings at 3:30 p.m. that the flight had been delayed, reducing even more the time between the judge's arrival and Borders' 7:30 p.m. departure, Borders would have told the judge that because of the delay he would not be able to pick him up.[146] If the only reason for their meeting that night had been the providing of a ride from the airport, there would have been no need for the judge to have made a second call to Borders advising him of the estimated departure time of the judge's flight. The purpose of their meeting on the night of September 11 went beyond mere courtesies.

---

[146] It is presumed that Judge Hastings and William Borders actually spoke at the time of the 3:27 p.m. call since no message was left at Borders' office at that time.

22-307 0 - 89 - 3

It was essential that Judge Hastings keep William Borders posted on his estimated arrival time so that Borders could do whatever was necessary to ensure that the two of them would have an opportunity to discuss in person what would happen the next day when William Borders met "Frank Romano." The House submits that is exactly what happened. Upon learning of the further delay, Borders decided to take a later flight to Miami. He then met Judge Hastings at National at approximately 8:00 p.m., and the two of them discussed the bribery scheme and the offers of proof which William Borders would make the next day to convince H. Paul Rico that he really did speak for Judge Hastings.[147] Sometime before 9:30 p.m. Borders boarded his flight to Miami via Atlanta. At approximately the same time, Judge Hastings left the airport to pick up his date for the evening and proceeded to the Sheraton Hotel.

The judge's alternative explanation of the delay from the time of his arrival until the time of his check-in is unpersuasive. Judge Hastings attributes the two and one quarter hours delay to two events -- an unusually long wait for his baggage and a cab driver who got lost. The judge says that during the wait at the airport he talked and joked with several prominent attorneys from Miami. At least by the time of Borders' trial in March 1982, Judge Hastings knew that his activities between the time of his arrival at 8:00 p.m. and Borders' departure at 9:25 p.m. on September 11

---

[147] Given that Dredge had previously said the Romanos had already been taken for $50,000, Borders knew he would have to prove Judge Hastings was really in on the deal.

would be critical. And yet none of these attorneys were called as witnesses before the Impeachment Trial Committee nor were they called at the judge's criminal trial.[148] The delayed luggage, the lost cab driver, the tardy companion are simply convenient falsehoods manufactured for the occasion.

Having met with Judge Hastings to discuss the bribery deal William Borders was able to promise Rico the next morning that Judge Hastings would show on September 16 at 8 p.m. at the Fontainebleau Hotel to prove his involvement in the bribery scheme.

Having set up the deal, Borders now needed to report the details of his meeting with H. Paul Rico that morning -- he needed to tell the judge what acts Rico had, in fact, demanded as a show of proof. Judge Hastings and Borders had developed offers of proof, but they did not know whether Rico would accept them or make other demands that they had not anticipated. So they planned a second meeting. Like the meeting at National, the meeting between Judge Hastings and William Borders on the night of September 12 at the Sheraton Hotel was not happenstance -- it was planned in advance.

There were five people in Judge Hastings' Sheraton Hotel room on the night of September 12 -- Margaret and Pearl Dabreau, Jesse McCrary, Donna Mendez Myrill and Judge Hastings. With the sole

---

[148] Similarly the judge offered no corroboration of his testimony that the cab driver was lost in Northwest Washington, near Walter Reed Hospital, for some inordinate period of time. Shirley Ross, the judge's date for that evening, testified at the criminal trial, but she was asked no questions about whether the judge called that night for directions to her home, or said anything after he finally arrived about having been lost.

exception of Judge Hastings, they all remember that they were sitting around that evening and were waiting for something. Ms. Myrill specifically remembers that they were waiting for William Borders, who she knew.

Certainly all of the circumstances of the events that evening support Ms. Myrill's testimony and the conclusion that Judge Hastings and William Borders had planned to meet. First, despite Judge Hastings' testimony to the contrary, others in the room testified that the judge was not surprised when William Borders appeared at his door at 10:00 p.m. Second, the group had gathered for the purpose of having dinner, and yet at 10:00 p.m. there had been no move to go to dinner. The group went to the dining room almost immediately after William Borders arrived. Third, William Borders cut short his stay at a long planned family reunion in Fort Pierce, Florida and made almost Herculean efforts to return to Washington on that evening. The only apparent reason for his return to Washington was to join Judge Hastings and the group at the Sheraton. Moreover, it is incredible that he would have gone to so much trouble without knowing that he would actually find Judge Hastings at his hotel on a Saturday night. William Borders returned to Washington, D.C., knowing he would find Judge Hastings, who was waiting to hear the outcome of the meeting with "Frank" Romano.

The evidence establishes that Borders made an offer of proof, immediately selected a date without needing to consult Judge Hastings, allowed Rico to pick a time and place for the show and

then returned to Washington to inform Judge Hastings. All that was left, was for Judge Hastings to appear as promised. He did so. On September 16, 1981, a little before 8:00 p.m., Judge Hastings arrived at the Fontainebleau Hotel.

Over the next two hours Judge Hastings had dinner in the main dining room with a friend, Essie Thompson. The Fontainebleau was not a place where the judge dined regularly for, according to Ms. Thompson, he had some difficulty finding the dining room and he did not appear to know his way around the hotel. At one point, not too long after they were seated, Judge Hastings left the main dining room and looked into the Poodle Lounge, making sure that he was seen. Nothing in his conduct that night or the events leading up to the dinner corroborates Judge Hastings' contention that he went to the Fontainebleau because William Borders had asked him to meet him there. Indeed, many of his actions were totally inconsistent with that premise.

Not once did he mention William Borders in connection with that dinner. Essie Thompson, a social acquaintance whose friendship with the judge continues, testified before the Impeachment Trial Committee that Judge Hastings called her twice with regard to the dinner -- once to invite her to join him and a second time to confirm the time he would pick her up. According to Ms. Thompson, at no time during those telephone calls, nor during the 20 to 25 minute drive to the Fontainebleau, nor during the dinner itself, did Judge Hastings mention the name of William

Borders or suggest that anyone might join them for dinner. Judge Hastings does not deny those facts.

Judge Hastings says that he told the hostess or the maitre d' that he was expecting someone to join them. Essie Thompson did not hear such a statement. And apparently the maitre d' did not hear it either, for they were seated at a table for four and the extra places were promptly removed. Judge Hastings, who had made reservations for two, did not object. Nor did Judge Hastings make any effort to find his friend -- he did not page Borders, or stop at the main desk to see if Borders had checked in, or look into the other restaurants at the hotel.

Finally, if Judge Hastings was not part of the deal as he argues, Borders would never have risked asking Judge Hastings to come to the Fontainebleau for the purpose of meeting him there, when Borders was to attend a championship fight in Las Vegas on the very same night. Borders had been planning this trip since the middle of August and his plans were not a secret. Borders would have been taking a significant chance that Judge Hastings might call his office -- for example, to find out when Borders would be arriving in the Miami area -- and learn from Cynthia Rogers that Borders was in Las Vegas. The judge would then have had no reason to go to the Fontainebleau and the deal would have been blown.

Ms. Rogers, Hemphill Pride and even H. Paul Rico knew William Borders was going to the championship fight and would <u>not</u> be in Miami on September 16, 1981. So too did Judge Hastings. He went

to the Fontainebleau as part of the bribery deal. The second offer of proof of Judge Hastings' involvement was delivered.

c. The October 6 Romano forfeiture order.

The third offer of proof involves the Romano forfeiture order. At the September 12 meeting with Rico, Borders promised that within ten days of a payment on the bribe Judge Hastings would issue an order returning to the Romanos a substantial part of their property which had previously been forfeited.[149] That order would be a second signal that the judge was on board, and the Romanos could then safely withdraw their appeals in order to pursue the reduction of their sentences. As with the first two offers of proof, Judge Hastings performed as promised. The terms of the offer, Judge Hastings' conduct with respect to the forfeiture order, the coincidence of the issuance of the order with other events in the conspiracy -- all lead to the conclusion that Judge Hastings was actively conspiring with William Borders to sell his office for personal gain.

This offer of proof illustrates William Borders' detailed knowledge about the nature of the forfeiture matter pending before Judge Hastings. Borders knew, first of all, that a large amount of the Romanos' property had been forfeited. He promised that part, rather than all, of that property would be returned. He

---

[149] Judge Hastings has argued that the order was originally supposed to issue within ten days of the September 12 meeting. His argument is based in large part on Rico's comment at the September 19 meeting that that was his understanding. Rico, however, was mistaken. For Borders was clear throughout the September 12 conversation that the ten days would begin to run after some money was paid. See HXs. 38a-b, at pages 3 and 9.

predicted that the portion returned would be substantial. Finally, Borders knew that the order would be issued shortly. These are very sophisticated pieces of inside information available only to someone familiar with the Martino case and its impact in the Romano case.

The very terms of this offer indicate that Judge Hastings had provided William Borders with the information about the Romano case. First, there is no evidence that William Borders had a source other than Judge Hastings for this information. Although the court files were open to the public, in 1981 those files were kept in the individual judge's chambers and were available only by making a request of the judge's staff. Neither Borders or his representative ever made such a request. The judge does not argue otherwise.

Judge Hastings suggests that security in the courthouse was quite lax, implying that Borders might have gained access to the files without staff knowledge. He has also presented evidence that many lawyers were interested in the Romano case and might have called inquiring about it, again without staff knowledge of who was actually making the inquiry. There is no support in the record for either of these theories, beyond Judge Hastings' testimony.

In any case, these arguments are irrelevant, for the public information available from the file or from the staff would be quite limited in scope. Indeed, it would be limited to one public fact: the previous May 4 forfeiture order. A person could not learn by reviewing the file or making a casual inquiry of chambers

staff whether the forfeiture was going to be reversed, the extent of such a reversal if any, or the timing of the reversal order. Such detailed information would be available to only a few people and disclosure would require a conscious decision on the part of the staff member. The staff denies having made such a disclosure and Judge Hastings does not argue that any member of the staff was responsible for the information Borders had on September 12, 1981. In short, the only explanation of how Borders gained his knowledge is his contacts with Judge Hastings.

Second, Judge Hastings' conduct with regard to the October 6 forfeiture order coincides precisely with other events in the Romano bribery scheme, providing further support for the conclusion that he conspired with Borders to obtain a bribe. Rico called William Borders on the afternoon of Friday, October 2 and informed him that he had not received the promised order reversing in large measure the May 4 forfeiture. Within a couple hours of Rico's inquiry, William Borders called Judge Hastings, but the judge had left for the day. When Rico called again on Sunday morning, Borders said that he had not been able to find out yet because he could not talk to anybody, and asked Rico to call again the next day. Who could he possible have meant other than Judge Hastings, who had left on Friday before Borders could reach him? That Sunday afternoon, Borders again tried to reach Judge Hastings, leaving a message at the judge's home. The very next morning Judge Hastings told his law clerk, Jeffrey Miller, that he wanted the Romano order

done that day. That afternoon, Borders assured Rico that the order had been taken care of.

Judge Hastings does not deny this sequence of events. He does not deny that he told Miller to finish the Romano forfeiture order right when Borders was giving assurances to Rico. Nor does he deny that this was the first time he instructed Miller to prepare the order by a time certain. His explanation for this incriminating evidence is that he was anxious to have this matter finished because Miller would be leaving by the end of the month, and he did not want this complicated order left for another clerk.

The judge's actions with regard to the October 6 order, however, were inconsistent with his usual approach and were not warranted by facts independent of the bribery scheme, including his law clerk's expected departure. In the first place, it was unusual for Judge Hastings to demand that an order, especially a complicated one, be finished on the same day. Jeffrey Miller, as well as another law clerk, Lisa Goldstein, testified to that fact.[150] Secondly, his communications with staff concerning the order created a sense of urgency that it be completed and sent out as quickly as possible. Miller dropped other matters and left the office to go home and work on the Romano order. He advised the secretary in advance that he would be bringing the order in and asked her to set aside time to type it -- a precaution which he did not take with any of the other matters that he had to finish before

---

[150] Ms. Goldstein's prior testimony was introduced at the Impeachment Trial Committee hearings. 2072.

completing his term with Judge Hastings. According to Marilyn Carter, the courtroom clerk, Judge Hastings apologized to the staff for the rush, and stated that the order had to get out that day. Indeed Ms. Carter was so impressed with the urgency of the matter that she sent the order special delivery. Clearly Judge Hastings' conduct undermines his assertion that it was only the writing of the order by Miller with which he was concerned, not its receipt by the parties.

Moreover, the explanation given by Judge Hastings -- that the timing of the issuance of the order was a product of the fact that Miller was leaving and that the judge had a busy travel schedule in October -- is unpersuasive for other reasons. Miller was not scheduled to leave for another four weeks. The judge's travel schedule had him in Miami for half of the work days in October 1981.[151] Therefore, there was ample opportunity for the judge to sign the order in early October significantly in advance of Miller's planned departure. Further, Miller was responsible for other complicated matters but they were not treated with the urgency given the Romano forfeiture order.

There are no other facts which innocently explain the manner in which the October 6 forfeiture order was issued. Nothing had happened in the Romano case in late September or early October to warrant any particular urgency in the issuance of the order. At the July 8 hearing, the judge had promised a "brief written order." No further briefs were submitted; nor was there further argument.

---

[151] RXs. 97, 100.

There was no legal deadline for the submission of the order. Nonetheless, the order was issued as promised.

The circumstances of the October 6 forfeiture order, like the other two offers of proof made by Borders, supports a finding that Judge Hastings was a knowing participant in the bribery conspiracy. There is no other reasonable explanation of the facts -- the detailed information known by Borders; the coincidence of the judge's unusual demand that the order be finished immediately with the series of phone calls between Rico, Borders, and Judge Hastings; the urgency with which the order was treated by the judge's staff; and the absence of any independent explanation for that urgency. Without exception these facts point to Judge Hastings complicity in the bribery scheme.

3. More examples of Judge Hastings' complicity: the April 9 pay phone call; the October 5 coded conversation; the October 9 flight from Washington; Hastings and Borders' Relationship.

In addition to the actions by Judge Hastings in conformance with the promises William Borders had made first to William Dredge, and then to H. Paul Rico, there is other conduct by Judge Hastings that can only be explained by his participation in the bribery conspiracy. Three events in particular stand out: 1) the April 9 pay phone to pay phone call charged to Judge Hastings' residence telephone; 2) the coded conversation between Judge Hastings and William Borders on October 5; and 3) the circumstances surrounding Judge Hastings' hurried departure from Washington, D.C. on October

9, 1981. In addition, Judge Hastings' and Borders' relationship undermines his assertion of innocence.

a. April 9, 1981.

The House submits that on April 9, 1981, Judge Hastings made a pay telephone call to William Borders as part of the bribery conspiracy. The call was from made from a pay phone in the Miami Federal courthouse to a pay phone in the District of Columbia Federal courthouse. It occurred near the time of significant events in the Romano bribery scheme. And, it has no innocent explanation. The circumstances of the call are as follows.

William Borders met William Dredge in March of 1981. By early April, Borders had learned from Dredge that the Romanos were "stand up" people and had asked him to convey to the Romanos that he could help them with their pending case. Sometime during the week of April 7, the Romanos were contacted and told that there was a Washington attorney who could help them. And, on April 8, the pleadings on the forfeiture issue were submitted. The very next day, on April 9, Judge Hastings called William Borders. He left a message that Borders should call between twelve and one that afternoon. At 12:15 p.m., a call was made from the pay phone just down the hall from Judge Hastings' chambers to a pay phone in the Federal courthouse in Washington, D.C. and charged to the judge's home number.

Judge Hastings does not deny that he made the call, although he claims to have no recollection of it and therefore cannot explain why he would leave his office to make a call to Washington,

D.C. The judge testified that the court's phone system was sometimes down, though he did not think it was down on that day.[152] And, in fact, other long distance calls were placed from chambers on that day. He initially suggested that the call may have been made on the spur of the moment because he realized after leaving his chambers that he had a call to make and did not want to return to the office for the sole purpose of making a call. But on further questioning he admitted that, unlike a call from a pay phone to a residence or office, a call from one pay phone to another pay phone would have to be prearranged and could not have been made on impulse.[153]

Judge Hastings admits that the call may have been placed in response to a request by William Borders that the judge go out to a pay phone and call him back. The judge, however, cannot explain why he would consent to such a request and act in such a bizarre manner.[154] The judge testified to concerns that the courthouse phones might be tapped. But those suspicions had not arisen in April of 1981.[155] Moreover, what topic could he have been discussing which would require such secrecy, except for the bribery scheme? He testified that there were various events occurring in the NBA in early April, 1981, which would require him to talk to

---

[152] 2222, 2343.

[153] 2343.

[154] 2221-22; 2342-43.

[155] 2246.

William Borders.[156] But none of those matters would have been so sensitive as to require such clandestine conduct. In short, there is no exculpatory explanation for this pay phone to pay phone call between Judge Hastings and William Borders which corresponds precisely to early key events in the Romano case. Borders and Judge Hastings were following the same pattern Borders and Dredge used to discuss clandestine matters -- go out to a pay phone and call me at a pay phone.

b. October 5, 1981.

The second instance of incriminating conduct by Judge Hastings also involves communication with William Borders by telephone -- the coded telephone conversation of October 5. The significance of this evidence cannot be overemphasized. Judge Hastings argues that this conversation was not coded, nor was it complicated.[157] It was a simple, short conversation about the drafting of letters soliciting financial contributions and support for the reinstatement efforts of their mutual friend, Hemphill Pride. According to Judge Hastings, he was calling William Borders to get information on Pride's financial status so that he could complete the draft letters.[158] The evidence, however, is overwhelming that Judge Hastings' explanation is untrue. The conversation is not about "letters for Hemp." Rather it is about the bribery scheme.

---

[156] 2226.

[157] 2382.

[158] 2257-58.

First, one must consider the testimony of Dr. Roger Shuy, Chairman of the Department of Linguistics at Georgetown University and an acknowledged expert in linguistics and conversation analysis. Dr. Shuy reviewed the October 5 conversation, the October 8 conversation between William Borders and Judge Hastings, the portion of the judge's criminal trial testimony that addresses the meaning of the October 5 conversation and ten recorded conversations between William Borders and other persons. Applying standard analytical linguistic procedures, Dr. Shuy carefully examined the October 5 conversation and concluded that it is in code.[159]

Dr. Shuy found three characteristics associated with coded conversations in the October 5 conversation: 1) the use of pause fillers, repeated words, and false starts around topic words in the conversation; 2) numerous logical inconsistencies; and 3) repeated confirmations of understanding. The first characteristic indicates the care both Judge Hastings and Borders were taking when choosing their words. The second characteristic illustrates that on its face the October 5 conversation does not make sense. And, the third characteristic -- repeated confirmations -- reveals the continuing need by each party to assure the other that he is being understood, even though they were allegedly talking about very simple information. The clustering of these three characteristics in this brief conversation indicates that the conversation is in code. In comparison the conversation between Judge Hastings and

---

[159] 536.

William Borders just three days later, has virtually no linguistic indicators of code even though the conversation is twice as long.[160]

Perhaps most important to the lay person are the logical inconsistencies. Dr. Shuy points out that the October 5 conversation is illogical not only in its ideas, but also in the syntax used to express those ideas. As an example, during his testimony, Dr. Shuy analyzed the following portion of the conversation:

WAB: See, I had, I talked to him and he, he wrote some things down for me.

ALH: I understand.

WAB: And then I was supposed to go back and get some more things.

When William Borders says "he wrote some things down for me," at face value that phrase would mean Hemp had written down some thoughts or ideas. The word "things" would be used to mean "ideas." In the very next sentence, however, Borders uses the word "things" in a manner which normally conveys an entirely different meaning. For when Borders speaks of "get[ting] some more things," the word "things" seems to represent tangible objects, not something intangible such as ideas or information. In the English

---

[160] In the October 5 conversation there are nine different instances where Judge Hastings or William borders use pause fillers, repeated words or false starts around the topic words in the conversation. The October 8 conversation has only one false start and one repeated word. The October 5 conversation is replete with logical inconsistencies; the October 8 conversation has none. Judge Hastings confirms his understanding of Borders' meaning four times in the October 5 conversation. In contrast, the October 8 conversation which is conveying such information as flight numbers and arrival time, has only two confirmations of understanding. 539, 542.

language, although one might say "I'm going to the library to get some ideas," one would not attempt to convey the same thought by saying "I'm going to the library to get some *things*." This unexplained shift in what is represented by the word "things" is an example of illogical syntactic construction. The break-down in common rules of English syntax is an indication that the parties are speaking in a rough code and the conversation cannot be accepted at face value.

Likewise, a common sense analysis by non-experts leads to the very same conclusion -- the conversation makes no sense on its face. Judge Hastings made this call for the purpose of getting information. According to the judge, the information he needed was an update on the financial status of Hemphill Pride. However the flow of the conversation belies this explanation. Judge Hastings' initial question to Borders is whether Borders heard from "him" since they had talked. When Borders gives a curt, almost non-responsive answer -- "yea" -- Judge Hastings does not ask a follow-up question such as "What did he say" or "What did you find out." Instead the judge acts as if Borders has given him a complete response. "Oh. Okay," says Judge Hastings, "Alright, then." The conversation continues with the nonsensical reports by Borders about someone writing some things down and going back to get more things, lescribed above. Judge Hastings repeatedly assures Borders that he understands what Borders is saying even though Borders' statements are illogical. And then Judge Hastings says there is "no great big problem" and he will send the stuff off to Columbia

the next morning. He has not obtained the information concerning Pride's financial status which he needed in order to complete the letters, yet he concludes that there is no problem and he can send the letters to Columbia.

Judge Hastings suggests that the reason he did not follow up and get the specific information for which he had called was that he was already beginning to waver in his decision to write the letters on behalf of Pride. There is nothing, however, in either the content or the tone of the conversation to suggest the slightest hesitation on the part of Judge Hastings.

Moreover, the conversation is unusual in several other respects. It does not have any of the congenial, social "patter" that one would expect from Judge Hastings. According to the judge, he had not spoken with William Borders for approximately two weeks. Yet the greeting is cursory at best -- not even a "How you doing." Similarly, at the conclusion of the conversation there is simply a quick "good-bye." There is no mention of the upcoming gala celebration in Washington, D.C. There is no discussion of the case over which the judge is presiding and whether he will be able to finish the trial in time to attend that celebration, which is in Borders' honor. If the judge is to be believed, they have not spoken in two weeks, it is only four days until the judge is supposed to come to Washington and yet there is no mention of the judge's plans -- not even a "See you on Friday." Comparison of this conversation with any other recorded conversation of Judge Hastings, or even with his testimony before the Impeachment Trial

Committee, reveals that the October 5 conversation was not in keeping with the judge's gregarious style.

Finally, if the conversation were about "letters for Hemp," one would expect corroborating facts independent of the conversation itself. Except for the existence of the purported draft letters, HX. 154, there are none.[161] Indeed, all of the extrinsic evidence is contrary to the purported content of the conversation.

For example, according to Judge Hastings, he was referring to Hemphill Pride when he asked Borders if Borders had spoken to "him" since the judge and Borders had talked. According to Judge Hastings, that would mean after September 20 or 21. Borders responds that he had. But there is no documentary or testimonial evidence to support that statement. And, except for a vague recollection of Judge Hastings, there is no evidence that Borders had spoken with Pride after September 21 in a context where Pride would be able to write anything down for Borders.[162] Further, Pride testified unequivocally that he did not write anything down for Borders at any time in the fall of 1981. Nor was he supposed to provide supplemental "things" for Borders.

Nor are there independent facts to corroborate Judge Hastings' statement that he would send the letters out the next morning. Not

---

[161] The draft letters are discussed in detail below in the discussion of Articles VIII and IX.

[162] Pride saw William Borders in September of 1981, but that was when he came through Washington before Borders went to Las Vegas for the fight.

only did Judge Hastings not send the letters out to Columbia the next day as promised, he did not even follow his usual practice and give them to his secretary to type. The judge's explanation for not sending the letters is that he decided overnight that such conduct would violate the judicial canons of ethics. But he did not advise Borders of that decision. According to Judge Hastings, Borders had hounded him about preparing these letters for months. Yet, having led Borders to believe that they would go out the next day, the judge did not even call Borders to tell him of his change of heart. Nor did he mention it in his conversation with Borders three days later on October 8. Nor, when he spent the better part of the morning with Borders on October 9. Judge Hastings states that he was waiting to talk with Borders and Pride together. However, as Judge Hastings admits, Pride knew nothing about the solicitation of letters or funds in his behalf. Pride had not been involved in the lengthy give and take between Borders and Judge Hastings about the writing of these letters.[163] Therefore there was no reason to postpone talking to Borders about his decision until a time when Pride would also be available. In short, the judge's explanation of his conduct is incredible.

The evidence that the October 5 conversation is in code is insurmountable. The conversation does not withstand expert

---

[163] Indeed, if he had, Pride would have informed Judge Hastings that such letters were inappropriate. They would not have been timely since Pride was not eligible for reinstatement for almost two years, and, in Pride's view, they might have been harmful, since he considered his reinstatement to the bar to be a strictly local matter.

linguistic or common sense analysis. The conversation, which is initiated by Judge Hastings, is inconsistent with the admittedly gregarious nature of the judge. There are no facts corroborating the events described in the conversation and the subsequent conduct by Judge Hastings undermines his false explanations. What then, is the actual meaning of the conversation? The House submits that Judge Hastings' true purpose in calling William Borders on the afternoon of October 5 was to confirm that the deal was still on in spite of the fact that the forfeiture order had not been issued within the time frame promised by Borders.

One must first place the October 5 conversation in the context of other events in the bribery conspiracy. The House submits that during the afternoon or evening of Sunday, October 4, Borders finally reached Judge Hastings after leaving a message at his home. At that time Borders must have told the judge that Rico was putting pressure on him about the order which was supposed to have been issued the week before. Judge Hastings must have assured Borders that he would take care of it right away, for, on the next morning, Judge Hastings instructed his law clerk to do the Romano order that day. Based on those assurances, Borders told Rico on Monday afternoon that the order had not gone out earlier as Borders had thought, but it had been taken care of and would go out that day or the next morning. Forty minutes after Borders' conversation with Rico, Judge Hastings placed the call which resulted in the coded conversation.

Judge Hastings clearly initiated this call for the purpose of obtaining specific information, not just to chat. When he asks whether Borders has "heard from him" since they talked, the judge is asking whether Borders had heard from "Frank" Romano. Having just spoken with the person he believes to be Romano, Borders responds that he has and does not elaborate. When the judge, by failing to make any substantive comment, appears to hesitate, Borders continues the conversation, using the code to relate what he had learned when he spoke with Rico. He describes the two part payment plan -- "he wrote some things down for me . . . and then I was supposed to go back and get some more things" -- thereby confirming that second part of scheme is still in place and Rico has not called off the deal. At this point, Judge Hastings does make a substantive response. He acts as if he has obtained the information he was seeking and states that he will send the stuff off to Columbia the next morning.

Judge Hastings has learned no new information about Pride's financial situation, but he <u>has</u> learned what he needed to know before signing the order returning over three quarters of a million dollars worth of property to the Romano brothers. As a result of the October 5 conversation, Judge Hastings issued the <u>Romano</u> forfeiture order the next evening. And two days later, when Rico inquires again about the order, Borders says it has gone out, it "went out yesterday morning" -- his specific information about the timing of the order coinciding exactly with Judge Hastings' promise on October 5 that he would send the "stuff" out in the morning.

The October 5 conversation, which makes no sense if accepted on its face, is satisfactorily explained only in reference to the Romano bribery scheme. The actions of the parties are consistent with the latter interpretation of the conversation, and independent facts corroborate that Judge Hastings was not calling William Borders about letters for Hemp, but instead to confirm that their scheme to obtain $150,000 bribe from the Romano brothers was still intact.

c. October 9, 1981.

The third compelling indication of Judge Hastings' guilt is the circumstances surrounding his departure from Washington, D.C. on October 9, 1981. This conduct, too, persuasively indicates that he was a knowing participant in the bribery scheme. Within an hour of learning of William Borders' arrest, Judge Hastings was in a cab on his way to the Baltimore Washington International Airport, in hopes of avoiding the FBI until he had returned to Miami. This conduct, even when measured against the standard of a Black Federal judge raised in the South in the 1940's and 50's, is further evidence of Judge Hastings' guilt.

Shortly after 2:45 p.m. on October 9, 1981, Judge Hastings learned that William Borders had been arrested and that agents of the FBI wanted to interview him. Judge Hastings did not call the FBI as they had requested. Instead he packed his bags and fled the hotel. He did not check out, he did not pay his room service charges, he did not pick up the suit which he had left with the valet service. Although he had no airline reservations for that

afternoon, he did not call and attempt to make reservations. Instead he simply got into a cab and asked to be taken to BWI.

Judge Hastings has offered a series of explanations for various aspects of this behavior: he did not check out because he thought he was not responsible for the room charge -- that perhaps it was complimentary. He gave Pride $100 to cover the room service and valet charges. He went to BWI because he thought all of the planes from National went through Atlanta.

Once again, none of the judge's explanations are corroborated by the evidence. The L'Enfant Plaza did not provide the room free of charge and someone other than Judge Hastings paid for it. Hemphill Pride denies that Judge Hastings gave him money or said anything about paying the judge's incidental expenses as he rushed from the hotel. Those charges were never paid and the suit was eventually recovered by the FBI. There was a non-stop flight from National Airport to Miami at 4:35 p.m. that afternoon -- a flight which Judge Hastings had taken just two months earlier when it left at 5:30 p.m.

The crux of Judge Hastings' explanation of his flight, however, is that he was concerned for his mother's welfare. He testified at his criminal trial that he called his mother from the L'Enfant Plaza and found that she was hysterical because of the onslaught of the media. He was rushing to get home in order to care for her. Although his testimony before the Impeachment Trial

Committee is less clear, it appears that he continues to rely on this explanation.[164] The facts, however, contradict this account.

In the first place, there is no documentary evidence that Judge Hastings called his mother that afternoon from the L'Enfant Plaza. Neither the hotel records nor Judge Hastings' residence telephone records reflect such a call. Indeed, the hotel records indicate that no call to Florida was made from any of the hotel rooms on the afternoon of October 9. The first documented conversation between Judge Hastings and his mother was at 4:37 p.m. from BWI. Hemphill Pride's testimony supports these records, for he stated that he was with Judge Hastings from the time the judge learned of Borders' arrest until Pride left the judge with his bags in the lobby of the hotel. No calls were made by the judge during that period according to Pride.

Second, Judge Hastings' conduct does not reflect an eagerness to get home to Florida so much as an eagerness to get away from the L'Enfant Plaza, the place where the FBI might come looking for him. One would expect that the first act of an experienced traveler who learned that he had to leave Washington, D.C. unexpectedly on a Friday afternoon would be to call the airlines to determine the next available flight. After all, the city is serviced by three airports with varying degrees of accessibility, especially in Friday afternoon traffic. In addition, Friday afternoon is a busy travel time, when one might expect to find flights booked. But Judge Hastings did not take the time to make

---

[164] 2355-56.

such a call. Instead he rushed from the hotel, got into a taxi, asked how far it was to the Baltimore airport, and upon learning that it was a $50 cab ride, obviously a good deal farther away than National, instructed the driver to take him to BWI.

The ride to Baltimore took the better part of an hour, and Judge Hastings arrived at the airport around 4:30 p.m. The first thing he did, however, was not to make arrangements for his flight home. Instead he called his mother. (The House submits that this was the first time he called his mother that day.) At 5:06 p.m. he began a series of calls to Patricia Williams, taking extreme measures to make sure that his conversation was not overheard.[165] It was only at 5:31 p.m., at the conclusion of the last conversation in this series, that Judge Hastings made reservations for his return to Florida.

Upon arriving in Ft. Lauderdale, Judge Hastings rented a car (for his car was parked at the Miami airport) and went to the home of Patricia Williams. There, at around midnight, the FBI found Judge Hastings and conducted their interview.

The House submits that the actions of Judge Hastings on the afternoon of October 9 were not those of a man eager to get home to his mother. They were the actions of a man who was actively

---

[165] Judge Hastings called Patricia Williams from one phone, gave her the number of a different pay phone and asked her to call back. When she called back, he instructed her to go out to a pay phone and call him again. She did so at 5:22 p.m. At that time he took her number, moved to a fourth pay phone and called her at her pay phone. The final conversation lasted four minutes. All of the previous ones had been one minute or less. Judge Hastings' explanations for this bizarre course of events have been both inconsistent and incredible.

involved in the bribery conspiracy for which his friend had been arrested and who needed some time to think through his story. They were the actions of a man who was not ready to face the questions of the FBI.

Judge Hastings opposes this proposition, arguing that to return home is not "flight." He contends that he was not trying to avoid apprehension. And that he certainly was aware of his right not to talk to the FBI, so there would be no reason for him to flee for the purpose of avoiding the FBI. But knowing one's Fifth Amendment rights and being willing to exercise those rights are two different things. Judge Hastings was also undoubtedly aware that a Federal district judge's refusal to answer questions about a bribery scheme alleged to involve that judge would be viewed with suspicion. The option of meeting with the FBI and refusing to answer questions was not a viable one. But Judge Hastings could delay that confrontation. His flight from Washington via BWI provided what the judge desperately needed -- time to think about his story before facing the FBI.

d. The Relationship of Judge Hastings and William Borders Since the Conspiracy Accusation Belies Respondent's Innocence

According to Judge Hastings, the ordeal that began for him on October 9, 1981, and which has endured to this day, was the result of a betrayal by his friend and ally of at least a dozen years, William Borders. Through his political connections, Borders had been instrumental in having Judge Hastings appointed to the Federal bench. According to Judge Hastings, within a matter of months of

his appointment, Borders exploited that position and their friendship by manipulating the judge into taking actions which convinced "Frank Romano," Santo Trafficante, and the FBI that the judge was selling his office.

If this were the case, one would expect the victim of this plot to harbor some sense of anger, if not outrage, towards his tormentor. Yet, events speak otherwise, and instead suggest a continuing conspiracy by Judge Hastings and William Borders to hide the truth.

This evidence starts at the moment Judge Hastings learned of Borders' arrest. According to his testimony, the judge realized almost immediately that the allegation of bribery "in his courtroom" might mean that Borders had implicated him.[166] Yet, Judge Hastings expressed no anger about Borders to Hemphill Pride, the bearer of this information.[167] Indeed, minutes after receiving the news, when he allegedly telephoned his mother, he was more concerned about finding out about "Bill" than taking care of himself or his "hysterical" mother.[168] Later that night, when the FBI finally found him at Ms. Williams' home, Judge Hastings still had nothing to say against William Borders.[169]

---

[166] 2266. See also Judge Hastings' criminal trial testimony at HX. 156 (at 1916-19).

[167] 696.

[168] HX. 156 (at 1915).

[169] 769.

Three days later, on October 12, 1981, Judge Hastings called Borders' home. He claims now that he actually called to speak to William Borders' mother, and that he did so at the request of his own mother, to express Mrs. Hastings' condolences. Even if one ignores the circumstances which suggest that this explanation is patently absurd,[170] and that the true purpose was to insure that Borders would maintain his silence, it was odd, at best, that Judge Hastings would take the risk that Borders himself would not answer his own telephone.[171]

Judge Hastings and William Borders were charged by the grand jury with conspiring with each other. At his trial, Borders used the same defense later raised by Judge Hastings: that no conspiracy existed because there was only one participant, Borders himself.[172] In preparation for trial, Borders' attorney allegedly was shown the "letters for Hemp," and Judge Hastings now claims that he was available to testify at Borders' trial.[173] Yet despite the fact that these alleged offers would supply critical evidence

---

[170] The call lasted two minutes or less, hardly a sufficient time to express condolences. There is no explanation why Mrs. Hastings did not place the call herself. Mrs. Hastings barely knew either Mrs. Borders or her son. Judge Hastings did not know Mrs. Borders, and could not even recall her first name. Moreover, if Judge Hastings had testified that his mother had made the call, he would also have to explain why she did not call from her own telephone, which was separately billed from her son's.

[171] The call was placed at 6:38 p.m., a time when William Borders was just as likely to be home to answer the telephone as his mother.

[172] U.S. v Borders, 693 F.2d 1318 (11th Cir. 1982).

[173] 2479, 2488.

in support of Borders' defense, neither was presented. Rather, the facts support the conclusion that Judge Hastings refused to testify,[174] and that the letters, if offered at all, were assumed by Borders' attorney to be fabricated.[175]

Judge Hastings' inexplicably solicitous attitude towards Borders is also apparent in his post-trial dealings with him. He did not ask that Borders be called in the impeachment proceedings in the House or the Senate, citing his concern for Borders' safety.[176] Yet when Borders refused to testify in both Houses, he never raised this issue, and in the Senate, he expressly refused to adopt this position.[177] Rather, he asserted that he had paid his

---

[174] As Borders' co-conspirator, Judge Hastings could not be compelled to testify.

[175] William Borders' attorney, John Shorter, was an experienced criminal defense attorney, who would understand his obligation to be objective and arms-length in his dealings with his client.

[176] Judge Hastings' counsel has asserted:

> Those familiar with Mr. Borders have informed us that, if he were to testify truthfully, it is likely that he would be murdered by criminal associates whom he had deceived during his career and with whom he still may be involved . . . Our assessment of the basis for these concerns and their probable affect on Borders's testimony will determine whether we ask the Committee to compel his testimony.

A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial that is Fair to Respondent (April 3, 1989) at 24-25.

[177] Indeed, as the colloquy reflects, Borders did not even seem to understand what Senator Rudman was talking about:

> **Senator Rudman**: . . . Your counsel has said and you have said in your statement that you are refusing to testify today on a variety of legal grounds: Fifth, Sixth, Eight

debt to society, and that to compel his testimony would violate various Constitutional rights.[178]

It is also appropriate to look at the behavior of William Borders from the time of his conviction, to glean his true relationship with Judge Hastings. Rather than testify under a grant of immunity, Borders is now in prison, having defied a court order compelling him to testify in the Senate. He complains that he has paid his debt to society, but if he had actually wronged his friend and colleague, why does he feel no obligation to repay his debt to him? If the truth would exonerate Judge Hastings, why did Borders assume that he was being called as a witness against Judge Hastings?[179] The House submits that William Borders, by his silence and imprisonment, has been more than generous to his partner in crime, but there is a limit to his willingness to suffer alone for

---

> and Fourteenth Amendments, plus the fact that you believe you have a right of appeal . . . . That is your complete statement on why you refuse to testify?
>
> **Mr. Borders**: Yes, sir.
>
> **Senator Rudman**: No other reasons?
>
> **Mr. Borders**: Not at this time.
>
> **Senator Rudman**: Right. So, in other words, you don't feel any personal jeopardy if you were forced to testify; is that correct?
>
> **Mr. Borders**: I don't understand your question, Senator.1165.

[178] 1156-57.

[179] 1778. Borders was subpoenaed by the Senate Impeachment Trial Committee to appear as its witness. Because the House of Representatives feared that Borders' continued refusal to testify might delay the proceedings, the House neither requested nor opposed his being subpoenaed.

the consequences of their conspiracy. To lie under oath in order to exonerate Judge Hastings, and risk a perjury prosecution is more than he is willing to do. Judge Hastings apparently understands this, for he has not risked pushing Borders too far by joining in the call for his testimony.

Finally, there has been the tenor of Judge Hastings' testimony in these and other proceedings. While he has been quick to angrily denounce the FBI, the Department of Justice, the Eleventh Circuit Investigating Committee, the House of Representatives, Hemphill Pride, William Dredge, and others, it was not until pressed by Senator Specter that he voiced anything against the man who should be his nemesis:

> The Vice Chairman: . . . Judge Hastings, you have expressed yourself in a forceful way, eloquent way, sometimes passionate way, angry at the Chief Judge of the Eleventh Circuit, angry at some of the things that the FBI has done, angry at a number of situations, used the word "resent," and I can understand that. But I've never heard you say anything about a resentment against Mr. Borders. Why not?

Judge Hastings responded that he did resent Borders "highly," but as Senator Specter then noted, " [E]ven in the manner of expressing it as you just did, there isn't the passion in your voice, there isn't the outrage. . . ."[180] The House contends that the passion is not there because it is not felt.

---

[180] 2401.

22-307 0 - 89 - 4

4. Conclusion.

The consistent pattern of contacts between Judge Hastings and William Borders at significant times in the Romano case, the judge's actions in conformance with the offers of proof made by William Borders, the suspicious conduct of the judge on April 9, October 5, and October 9, and Judge Hastings' relationship with Borders since their crime came to light overwhelmingly establish that Judge Hastings joined in a scheme to obtain a bribe as charged in Article I of the Articles of Impeachment. All of this evidence focuses on the conduct of Judge Hastings. Judge Hastings' assertion that there is no evidence against him is wishful thinking.

In conclusion, the House urges the Senate to consider one aspect of William Borders' behavior -- the solicitation of a bribe from Santo Trafficante. In arguing his innocence, Judge Hastings puts forth a "rainmaking" defense. He states that William Borders was somehow taking advantage of his friendship with the judge, claiming that he could control Judge Hastings and, thereby, scamming organized crime figures by promising favorable treatment from Judge Hastings when, in fact, he had no such control. The House submits that this argument is not only unsupported, but, more importantly, it ignores the reality of the situation. In addition to the facts argued above, which indicate active participation in the conspiracy on the part of Judge Hastings, there is the undeniable fact that to "scam" an organized crime figure such as Santo Trafficante would be extremely dangerous. Without exception,

witnesses who knew Trafficante testified before the Impeachment Trial Committee that a person who attempted to defraud him would be in a very dangerous situation. Santo Trafficante knew how to respond when defrauded of hundreds of thousands of dollars. That Borders would take such risks by making promises of favorable treatment by Judge Hastings that he could not actually guarantee is incredible. Judge Hastings' attempt to disassociate himself from Borders is wholly unpersuasive.

Judge Hastings entered a corrupt relationship with William Borders, attempted to sell his office for personal gain and destroyed the integrity of the Federal bench by doing so. The House of Representatives respectfully submits that Judge Hastings should be found guilty as charged in Article I.

C. ARGUMENT: ARTICLES II-XV

Articles II through XV of the Articles of Impeachment charge Judge Hastings with knowingly testifying falsely under oath 14 different times at his criminal trial. As established above, Judge Hastings entered a corrupt relationship with William Borders to obtain a bribe. When confronted with his crime, he lied under oath in order to obtain an acquittal.

Each of the 14 false statement articles charges a separate instance in which Judge Hastings lied to the jury about his participation in the bribery scheme. In each instance, he was addressing a critical part of the case. In each instance, he needed to explain away incriminating evidence. Judge Hastings did

so by intentionally violating the oath he took to tell the truth -- an oath that is administered every day in his own courtroom and which he has a sworn duty to enforce.

1. Analysis of False Statement Articles

Article II

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings and William Borders, of Washington, D.C., never made any agreement to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article III

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., to modify the sentences of defendants in United States v. Romano, a case tried before Judge Hastings, from a term in the Federal penitentiary to probation in return for a bribe from those defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article IV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., in connection with a payment on a bribe, to enter an order returning a substantial amount of property to the defendants in United States v. Romano, a case tried before Judge Hastings. Judge Hastings had previously ordered that property forfeited.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Three different times during the course of his criminal trial testimony, Judge Hastings unequivocally denied participating in a conspiracy with William Borders. Articles II, III and IV charge that the judge lied in each instance. The evidence in support of these articles is overwhelming. It is the same that has been presented in support of Article I. The House of Representatives respectfully submits that the Senate should find Judge Alcee Hastings guilty as charged in Articles II, III and IV.

Article V

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' appearance at the Fontainebleau Hotel in Miami Beach, Florida, on September 16, 1981, was not part of a plan to demonstrate his participation in a bribery scheme with William Borders of Washington, D.C., concerning United States v. Romano, a case tried before Judge Hastings, and that Judge Hastings expected to meet Mr. Borders at that place and on that occasion.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article V charges Judge Hastings with lying under oath about his appearance at the Fontainebleau Hotel. The judge testified at his criminal trial that he appeared as promised, not because he was in on the bribery deal, but because William Borders had asked to meet him at the hotel that evening. The evidence in the record establishes the incredibility of this claim. Judge Hastings appeared at the main dining room of the Fontainebleau Hotel, a little before 8:00 p.m., on September 16, 1981, to prove to the Romanos he was in on the scheme.

The majority of evidence in support of this conclusion has already been set forth in this memorandum. Two additional points, however, deserve emphasis. First, given how many people Borders told he was attending the Leonard-Hearns championship fight the very night of the Fontainebleau dinner, Judge Hastings must have also known about the trip. Borders and Pride discussed who was going to win. Even Borders and Rico discussed the fight. It defies common sense that when he talked to Judge Hastings four different times between September 1 and 11, Borders would remain silent about the trip he was taking on September 16. Nor does it

make sense that Borders would risk blowing $150,000 by inviting Judge Hastings for dinner on a day everyone else knew he would be in Las Vegas, and at the very point in time when he and Judge Hastings were in such close contact allegedly regarding their friend Hemphill Pride.

The second point deserving emphasis is that Borders never doubted that Judge Hastings would show as promised at the Fontainebleau Hotel. Based on that appearance, Borders was to collect from Rico an upfront payment on the bribe on September 19. When Borders returned from Las Vegas to National Airport on September 18, he immediately changed planes and headed for Miami as if he knew all was well. Borders never spoke to Rico to determine whether Judge Hastings had shown. Judge Hastings has unequivocally testified that Borders did not immediately call to apologize for not showing up. Thus, the judge could not have inadvertently confirmed the show. How then did Borders know that the offer of proof had been satisfied? He knew because Judge Hastings was part of the bribery conspiracy.

THe House of Representatives submits that Judge Hastings intentionally lied to the jury about his appearance at the Fontainebleau Hotel. He did so in an effort to explain away highly incriminating evidence. His corrupt conduct demands removal from the Federal bench.

Article VI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings did not expect William Borders, of Washington, D.C., to appear at Judge Hastings' room in the Sheraton Hotel in Washington, D.C., on September 12, 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article VI charges Judge Hastings with testifying falsely under oath about William Borders' appearance at the Sheraton Hotel on September 12, 1981. To explain away incriminating evidence of a planned meeting with Borders just hours after the first meeting with Rico, Judge Hastings told the jury that he did not expect to see Borders that night. According to the judge, he was surprised by Borders' appearance at his hotel room at 10:00 p.m. on a Saturday night. The evidence overwhelmingly establishes, however, that this testimony was false. Borders' arrival at the Sheraton was planned. He appeared in order to convey to Judge Hastings what had transpired at the first meeting setting up the bribery conspiracy.

As discussed in the Statement of Facts and in support of Article I, Judge Hastings' testimony in this regard is flatly contradicted by the testimony of other persons in his Sheraton Hotel room that evening. Donna Mendez Myrill, Margaret Dabreau

Owens and Jesse McCrary all state they were waiting for something, and they have no reason to lie. Indeed, they are Judge Hastings' friends. Moreover, William Borders' complicated and purposeful maneuvers to reach Washington, D.C. that night undermine Judge Hastings' unpersuasive testimony. Indeed, they deserve special emphasis.

On September 12, 1981, after meeting Rico and setting up the bribery deal, Borders left Miami at approximately 11:00 a.m. to attend a long-planned family reunion. He flew to West Palm Beach and drove an hour and 20 minutes to Ft. Pierce, Florida where the reunion was being held. Borders was not scheduled to return to Washington, D.C. until the next day, Sunday, September 13th.[181]

Within minutes of arriving at his family reunion, however, Borders got on the telephone. At 1:06 p.m., he made two airline reservations: one for an Eastern flight scheduled to depart that day from West Palm Beach to Atlanta at 4:12 p.m., and one on an Eastern flight scheduled to depart Atlanta for Washington, D.C. at 6:45 p.m. In order to take the first flight, Borders would have had to drive the 60 miles back to West Palm Beach.[182]

At 3:30 that afternoon, however, Borders cancelled his West Palm Beach - Atlanta flight and reserved instead an Eastern flight scheduled to depart Melbourne, Florida for Atlanta at 4:35 p.m.

---

[181] 427-29; HX. 86; S.60, S.66.

[182] PT of Laverne Boone at 494-95; PT of Richard Lowe at 452; HX. 73; S.254, S.255, S.260.

Melbourne was also a 60 mile drive from the site of the family reunion.[183]

Borders made that drive. But he missed his flight. At 4:39 p.m., at the Melbourne Airport, Borders made a reservation on another Eastern flight, this one from Orlando, Florida which was scheduled to arrive Washington, D.C. at 10:00 p.m.[184]

Borders then drove another great distance to Orlando. Still, though, he was not satisfied. At the Orlando Airport, he cancelled his Washington, D.C. reservation and reserved an earlier flight to BWI. Ultimately, Borders took this flight. He arrived at BWI shortly before 9:00 p.m. Sometime after 10:00 p.m., he arrived at Judge Hastings' Sheraton Hotel room.[185]

The foregoing effort made by William Borders to return to Washington, D.C., as well as all the other evidence establishing that Judge Hastings and Borders had planned to meet at the Sheraton Hotel, establishes the judge lied under oath at his criminal trial. The House submits that his false testimony, as charged in Article VI, shows a flagrant disregard for the law and requires removal from office.

---

[183] PT of Laverne Boone at 494-95; PT of Richard Lowe at 452; HX. 73.

[184] Id.

[185] 2245, 1455; PT of Laverne Boone at 494-95; PT of Richard Lowe at 452; HXs. 72, 73, 156 (at 1840-41, 2110-11); S.71, S.72.

Article VII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement concerned Judge Hastings' motive for instructing a law clerk, Jeffrey Miller, to prepare an order on October 5, 1981, in United States v. Romano, a case tried before Judge Hastings, returning a substantial portion of property previously ordered forfeited by Judge Hastings. Judge Hastings stated in substance that he so instructed Mr. Miller primarily because Judge Hastings was concerned that the order would not be completed before Mr. Miller's scheduled departure, when in fact the instruction on October 5, 1981, to prepare such order was in furtherance of a bribery scheme concerning that case.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article VII charges Judge Hastings with testifying falsely at his criminal trial with respect to why, on October 5, 1981, he told his law clerk, Jeffrey Miller, to prepare the order returning a substantial amount of the Romanos' property. Judge Hastings contends that he gave the instruction because Miller was leaving chambers at the end of the month. While it is true that Miller was scheduled to leave at the end of October, the real reason that Judge Hastings told his law clerk to get out the Romano order that day was to implement a part of the bribery conspiracy.

The governing law requiring Judge Hastings to reverse the Romano forfeiture order existed as of June, 1981, and the judge was well aware of the law. Nonetheless, Judge Hastings did not

acknowledge that the forfeiture must be reversed until September. By this time Borders had been informed by Dredge that the Romanos were showing an interest in the bribery deal. Then, Judge Hastings did not effectively follow through on his instruction to reverse his earlier order until the bribery scheme was in place, the down payment had been made, and the series of phone calls between Rico, Borders and Judge Hastings had occurred.

In addition, Judge Hastings put unusual pressure on his staff to get the order out, to the point where his deputy clerk sent the order special delivery.[186] He does not deny that he said to Marilyn Carter, "Sorry for the rush, but this must go out today." The judge did not put pressure on Miller to finish any other outstanding work prior to his departure. Moreover, Miller testified that Judge Hastings' instruction to get out the order "that day" was unusual.

The totality of the evidence establishes that Judge Hastings' explanation under oath as to why he wanted the Romano order out on October 5, 1981, was knowingly false and stated with the intention of misleading the jury. For the foregoing reasons, and for the reasons stated in support of Article I, the House submits Judge Hastings should be removed from office for this separate offense.

---

[186] James Deichert, the prosecutor in the Romano case, testified before the Impeachment Trial Committee that he had never received any notice or order from the judge special delivery prior to October 6, 1981.

Article VIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' October 5, 1981, telephone conversation with William Borders, of Washington, D.C., was in fact about writing letters to solicit assistance from Hemphill Pride of Columbia, South Carolina, when in fact it was a coded conversation in furtherance of a conspiracy with Mr. Borders to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article IX

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trier of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that three documents that purported to be drafts of letters to assist Hemphill Pride, of Columbia, South Carolina, had been written by Judge Hastings on October 5, 1981, and were the letters referred to by Judge Hastings in his October 5, 1981, telephone conversation with William Borders, of Washington, D.C.

Wherefore, Judge Alcee L. Hastings, is guilty of an impeachable offense warranting removal from office.

Articles VIII and IX both address the October 5, 1981, conversation between Judge Hastings and William Borders regarding "letters for Hemp." Article VIII charges the judge with knowingly

testifying falsely at his criminal trial with respect to the meaning and purpose of that conversation, while Article IX alleges that Judge Hastings violated his oath by testifying that three documents were actual drafts of the letters, referred to in the conversation and written on October 5, 1981.

For all the reasons previously set forth in support of Article I, the October 5 conversation was not about "letters for Hemp," but rather conveyed information about the bribery deal. In addition, Judge Hastings' conduct, when he discussed the October conversation with Hemphill Pride during a drive to the Columbia, South Carolina airport, is further, compelling evidence that the judge lied under oath about the purpose and meaning of the October 5 call.

During that drive, Judge Hastings lobbied his best friend in an attempt to obtain Pride's agreement that the October 5 conversation was, in fact, legitimate. The judge told Pride it was important that he remember the letters. When that did not work, he stated that Pride did not need to know about the letters, for the defense would still stand up. He then tried to convince Pride that his and Borders' efforts were for real. Pride would have none of it. The House submits that Pride refused to go along with Judge Hastings' story because there never were any legitimate discussions between Judge Hastings and Borders about "letters for Hemp." It defies common sense that Judge Hastings' best friend would not know of efforts being made on his behalf. Moreover, given the very close ties between the two men, it makes no sense for Pride to refuse to help the judge if he could do so honestly.

With respect to the draft letters themselves, there is overwhelming evidence that they were fabricated by Judge Hastings to bolster his defense, thereby rendering his testimony about the documents knowingly false. The timing of the letters' production to the Government -- ten months after a discovery order required their production and only one month before Judge Hastings' criminal trial -- sets the stage of suspicion. The judge also admits that as early as December, 1981, near the time of his indictment, he knew that the draft letters would be critical to his defense to the October 5 call, yet neither in December, January nor February did he show the drafts to his principle counsel. His counsel then resigned in early March.

Further evidence that Judge Hastings lied in this regard are the draft letters themselves. As pointed out by the Vice Chairman during the Impeachment Trial Committee's hearings, the three letters are pristine. There are no strike outs, cross overs or changes on the six handwritten pages. Yet, according to Judge Hastings, he drafted the letters on the bench, while presiding over a jury trial requiring evidentiary rulings. His attention was divided, yet the letters reflect otherwise.

Finally, there is Judge Hastings' own suspicious behavior. He testified that he often drafts documents while on the bench and that it was his normal practice to give such drafts to his secretary to type when he got off the bench. However, he did not do so in this case. This is especially odd given that the judge allegedly did not change his mind about the propriety of the

letters until he was home, late that night. Then there is the question why Judge Hastings bothered to save the letters. He testified that he affirmatively decided not to send the drafts because to do so would violate the Judicial Canon of Ethics. Thus, there was no reason to keep the letters hidden in his desk drawer as Judge Hastings purports to have done. Yet here they are, available when needed months later.

All of this evidence, in its totality, establishes that Judge Hastings' testimony regarding the October 5, 1981 conversation and the draft "letters for Hemp" was fabricated in an effort to hide the bribery conspiracy from the jury in his criminal case. He continued to lie before the Impeachment Trial Committee. His knowing violation of his oath, as charged in Articles VIII and IX, requires his removal from the Federal bench.

Article X

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on May 5, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article XI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on August 2, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803-782-9387 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article XII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on September 2, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article XIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that 803-777-716 was a telephone number at a place where Hemphill Pride could be contacted in July 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Articles X through XIII charge Judge Hastings with knowingly testifying falsely under oath at his criminal trial about four telephone calls allegedly made to Hemphill Pride or to a place where Pride could be reached. At the conclusion of Judge Hastings' direct examination, Patricia Williams handed the judge various telephone records and asked him to identify four long distance calls that had been highlighted by check marks. In response, Judge Hastings unequivocally testified that three of the telephone calls reflected on the phone records were calls he had made to Hemphill Pride. He also testified, without reservation, that the fourth call was made by William Borders to a place where Judge Hastings knew Pride could be reached.

There is absolutely no dispute that Judge Hastings' testimony was untrue. Not one of the four phone calls was made to Hemphill Pride or to a place where Pride could be reached. Rather, the identified numbers belonged to a business contact of William Borders, a social acquaintance of Judge Hastings (who was called twice) and Patricia Williams' ex-mother-in-law, all of whom reside in Columbia, South Carolina. Judge Hastings has had to admit these facts. He contends, however, that he did not knowingly testify falsely about the calls. According to the judge, despite the fact he had a year to prepare for trial, he just made a mistake.

As established by the evidence, this excuse is incredible. Indeed, the very significance of the four phone calls establishes that the lies were intended to deceive the jury.

a. The Four Phone Calls Are Significant and Material

The four calls allegedly made to Hemphill Pride are critical because, aside from the fabricated letters themselves, they are the only documentary evidence Judge Hastings was able to produce at his criminal trial in support of his defense that he and William Borders were intimately involved in Hemphill Pride's problems. Judge Hastings knew he had to refute the Government's argument that the October 5 conversation between himself and William Borders was a coded exchange of information about the conspiracy. He knew that there would be no testimonial evidence besides his own self-serving claims that his frequent and extended contacts with Borders were allegedly about Hemphill Pride. Moreover, Judge Hastings knew that the record would be devoid of any evidence that his alleged strategy calls with Borders resulted in any action to benefit Pride. In short, he needed documentary evidence to bolster his claim.

Likewise, Judge Hastings knew that the draft letters themselves were insufficiently convincing, in view of the suspicious manner in which they were withheld from his own counsel and, until the eve of trial, from the Government. He also knew for at least a year before his own trial that Hemphill Pride would not support his story, for at William Borders' trial, Pride had testified that he did not know of any such letters, nor would he

have wanted any. Pride had also denied a key element of the October 5 call: that Borders had spoken to Pride to get some further [financial] information from him. Thus, the four telephone calls to Hemphill Pride were critical. They allegedly documented Judge Hastings' and Borders' contact with Hemphill Pride. The telephone records were key evidence.

b. Judge Hastings Knowingly Lied About the Phone Calls

The facts set forth immediately above not only explain the significance of Judge Hastings' false testimony about the four phone calls, but also they establish that Judge Hastings knew that his testimony was false. In addition, there is compelling other evidence undermining Judge Hastings' incredible excuse that he just made a mistake.

The facts pertaining to the call actually made to the former mother-in-law of Patricia Williams, Judge Hastings' own defense counsel, illustrate the point most graphically. In this instance, Judge Hastings asks the Senate to believe that both he and Ms. Williams innocently made a mistake about an 18 minute telephone call, made from Ms. Williams' home, to a number that Ms. Williams had called 14 different times during the two and one-half years prior to Judge Hastings' trial. These facts are not only inconsistent with an innocent mistake, but also they illustrate Judge Hastings' reckless disregard for the truth.

Judge Hastings' explanation to the Impeachment Trial Committee about this call further compounds the incredibility of his excuse. At the hearing, he presented evidence that all the calls over the

years to the former mother-in-law were actually made by Ms. Williams' daughter, thereby explaining how Ms. Williams could have been innocently confused. In 1976, however, when the records first indicate calls to the ex-mother-in-law from Ms. Williams' home, Ms. Williams' daughter was only five years old. Plus, one would have to assume that for years Ms. Williams did not review her telephone bills before paying them.

Moreover, in a further attempt to explain away his false testimony about the telephone call and to protect Ms. Williams from any implication of wrongdoing, Judge Hastings testified before the Impeachment Trial Committee that Ms. Williams had nothing to do with the identification of the four telephone calls. According to the judge, he hurriedly looked over the phone records and picked out the telephone calls the night before he testified in this regard, when Ms. Williams was indisposed.

A review of the record, however, establishes that this testimony, suspicious on its face, is also untrue. When Judge Hastings testified about the four calls at his criminal trial, Ms. Williams handed him the records and stated, "Judge, would you tell us about the first call that I indicated with a little check on the front page, there?" Judge Hastings then identified the call as one he made to Hemphill Pride. Minutes later, Ms. Williams stated, "Now, would you seek out the second call that I have indicated on

those toll records with a little check?" Judge Hastings complied, again stating that the call was to Hemphill Pride.[187]

Further evidence that Judge Hastings knowingly testified falsely about the four phone calls is the unequivocal, definitive manner of his testimony. Judge Hastings is a district court judge, and an experienced trial attorney. He knows the import of taking an oath to tell the truth. He also knows that an attorney has an obligation to investigate the facts before presenting them in court. Therefore, if the judge were as hasty in identifying the telephone calls as he claims, and had made no effort to verify their accuracy, one would think his testimony would reflect at least some hesitancy. It does not.

Indeed, Judge Hastings' testimony at his criminal trial about the four phone calls suggests that he <u>had</u> corroborated his information. For example, in response to questions posed by Ms. Williams, the judge testified as follows:

Ms. Williams:	And to whom was that call placed?
Judge Hastings:	I know <u>for a fact</u> that this particular call was placed to Hemphill Pride.
Ms. Williams:	Did you speak with Hemphill Pride?
Judge Hastings:	I <u>certainly</u> did."
Ms. Williams:	On that day?
Judge Hastings:	I <u>certainly</u> did."[188]

---

[187] <u>See</u> HX. 156 (at 2048-49) (emphasis supplied).

[188] HX. 156 (at 2048-49) (emphasis supplied). The same misplaced certainty was exhibited in the hearings before the Senate Impeachment Trial, where, for example, Judge Hastings testified that the only reason William Borders was at his investiture was

In short, Judge Hastings' own testimony is inconsistent with his defense.

Finally, it must be emphasized that even if Judge Hastings failed to inquire as to whether the four phone calls were actually to his friend Hemphill Pride -- either by asking his own counsel, the telephone company, Pride or consulting his own personal listing of telephone numbers -- that does not constitute an adequate legal excuse to the charges contained in Articles X through XIII. While mere negligence may not rise to the level of the intent required by the element of "knowingly" testifying falsely, courts have held that when a "defendant deliberately closed his eyes to what would otherwise have been obvious to him," the trier of fact may infer "willfulness."[189] Judge Hastings' knowledge of the falseness of his testimony and intent to mislead the jurors may be inferred from his willful blindness to the existence of a certain fact or facts.[190]

In summary, the evidence is overwhelming that Judge Hastings intentionally lied about the critical telephone calls to South Carolina. His feeble excuse of a mistake has no basis in the record, defies common sense and is a reflection of one fact -- his

---

because of his position as President of the National Bar Association. Presumably, Judge Hastings so testified in order to negate the assumption that he and Borders were close, a contention which he pressed during his criminal trial. However, during cross-examination, he was forced to admit that Borders was not the NBA President at that time.

[189] United States v. Martin, 773 F. 2d 579, 584 (4th Cir. 1985).

[190] Id.; United States v. MacKenzie, 777 F.2d 811, 818 n.2 (2d Cir. 1985)

falsehoods, unknown at trial, have now been discovered. The Senate should find Judge Hastings guilty as charged in Articles X through XIII.

Article XIV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on the afternoon of October 9, 1981, Judge Hastings called his mother and Patricia Williams from his hotel room at the L'Enfant Plaza Hotel in Washington, D.C.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article XIV charges Judge Hastings with knowingly testifying falsely at his criminal trial with respect to two telephone calls allegedly made from the L'Enfant Plaza Hotel. The significance of this testimony derives from the fact that Judge Hastings used this evidence to refute the inference of guilty flight arising from his hasty departure from Washington upon learning of Borders' arrest. The argument that the judge's "flight" supported an inference that Judge Hastings had conspired with William Borders had been successfully raised in United States v. Borders,[191] and Judge Hastings knew it would be raised again at his criminal trial.

---

[191] 693 F.2d 1318 (11th Cir. 1982).

Judge Hastings testified at his trial that he hurried home not because of fears that he would be arrested or questioned before he had thought through his story, but because his mother had learned about the arrest and was "hysterical," having already been confronted by reporters. "You come home," he claims she instructed him. "My express purpose," he testified, "was to see about my mama and it's just that clear."[192]

His call to his fiancee and later defense attorney, Patricia Williams, also gave him reasons to return home promptly, he claimed. Ms. Williams allegedly told him not only that his staff was being interviewed by the FBI, but also that in her own FBI interview, she had been asked about the judge's financial condition, the Fontainebleau, and William Borders, all of which led Judge Hastings to start worrying that Borders had implicated him.[193] After pondering this, Judge Hastings supposedly made his decision to go home.

Documents establish that Judge Hastings spoke to his mother from BWI airport at 4:37 that afternoon, and to Ms. Williams several times from the airport a few minutes later. However, reliance on those records would not support his testimony, since by then he was already on his way to Florida. His guilt induced flight was already underway. Accordingly, Judge Hastings lied and told the jury that he had called them before packing his bags and leaving the hotel. To explain why Pride did not corroborate the

---

[192] HX. 156 (at 1914, 1924).

[193] Id. (at 1915-18).

fact of these calls, he further lied by claiming that after Pride advised him of Borders' arrest, he returned to his room alone, and completed his two calls just "a minute or two" before Pride rejoined him.[194]

The evidence demonstrating that this testimony was false is overwhelming. Indeed, faced with this evidence, in the proceedings before the Impeachment Trial Committee, even Judge Hastings seems to be retreating from his earlier certitude.[195]

---

[194] Id. (at 1916).

[195] Before the Impeachment Trial Committee, Judge Hastings' direct testimony proceeded as follows:

> **MR. ANDERSON:** Judge, let me, before we get you back in the cab, go back to your room. You indicated you made two calls after you came back from Hemphill.
>
> **JUDGE HASTINGS:** You know, Professor Anderson, I don't want to buy into Agent Mazzella's notion with reference to in every instance people get time things confused, but I was in a state of shock about Borders' arrest and the fact that there was some kind of indication that the arrest surrounded something having to do with my responsibilities as a judge could cause me to be confused. I don't beg out of that. I know that I talked to my mom and I know that I talked to Patricia. 2267.

Then, minutes later, Judge Hastings testified:

> . . .[W]hen I spoke to [my mother], either at the L'Enfant Plaza or at Baltimore, I could hear banging on the doors and loud noises and I could sense her concern. 2269.

Compare this with his testimony at his criminal trial discussed above, as well as the testimony of his mother. In response to a question pertaining to "what she told Al Hastings that she was experiencing which affected his actions from Washington, D.C.," Mrs. Hastings stated: "They [reporters] were . . . bamming on the screen and even peeking in the windows until I drew the shades. . . .[The first time my son called] he could hear them." PT of Mildred Hastings at 2052.

The evidence establishing Judge Hastings' guilt on Article XIV consists of testimonial and documentary evidence coming from a variety of sources. To believe Judge Hastings, one must disbelieve Hemphill Pride, FBI agents, Patricia Williams herself, the Comptroller of the L'Enfant Plaza Hotel, and documentary evidence consisting of records from the telephone company, the hotel, and from Judge Hastings' own condominium complex.

As noted above, Hemphill Pride testified that from the time he advised Judge Hastings about Borders' arrest until he accompanied Judge Hastings to the hotel lobby to leave, Pride was constantly with Judge Hastings and saw him make no telephone calls. Patricia Williams, in a letter to Judge Hastings dated October 14, referred to his having called her on October 9 "from Baltimore." No mention was made of calls from the hotel.

There is also circumstantial evidence that neither calls could have been made at the time and place claimed. From other evidence it is known that if Judge Hastings made any calls from the hotel,

---

See also Respondent's Answer to Article XIV in which he "denies that the substance of these statements was false or intended to mislead the triers of fact and states that these statements were, at the time they were made, true to the best of his recollection and belief and were made to enable the jury to reach a true verdict." (Emphasis added) Compare this with the less equivocal language used in answer to other false testimony articles. In answer to Article IX, for example, he merely "denies that the substance of his statement was false or intended to mislead the jury and states that it was true and made to enable the jury to reach a true verdict."

they would have to have occurred between about 2:45 and 3:40 p.m.[196] During that time period, neither Mrs. Hastings nor Ms. Williams could have obtained the information which Judge Hastings claims he received during those calls. With respect to his mother, the security logs at the Hastings' residence, which required guests to sign in at the guard's office before entering the complex, show no reporters present in the complex that day until around 8 p.m.[197] Likewise, because Ms. Williams was being interviewed by the FBI during the critical period, she could have spoken to neither the judge nor his chambers' staff.[198]

Perhaps the most objective and compelling evidence in support of this article is the billing records of long distance calls from guest rooms at the L'Enfant Plaza Hotel. First, there are the bills for the suite of rooms occupied by Judge Hastings and William Borders. Although Judge Hastings says he charged these calls to his room, the bills do not reflect any long distance calls for the

---

[196] Judge Hastings had to leave the hotel by about 3:40 p.m. to get to BWI by 4:37 p.m., when he called his mother, since it would have taken at least an hour to get there by taxi during Friday afternoon traffic. He could not have called from the hotel before 2:45, because it was at that time that Borders' attorney, John Shorter was asked by Special Agent Murphy to relay a message to the judge to call the FBI.

[197] 2357-58.

[198] Even if it is assumed that the very brief call she received during the interview from a person both Ms. Williams and her secretary identified as a client was actually from Judge Hastings, Ms. Williams still would have had no opportunity to speak to the judge's staff prior to talking to him.

relevant time period.[199] Second, there are the records generated for all long distance calls charged to all the guest rooms at the hotel on October 9. Again, these computer-generated records show no calls being charged to a guest room during this time period, thereby negating the possibility that the room bill was incorrect because the call had been billed to another room.[200] Nor is there any evidence that the computer billing system was in any way defective or "down" at any time that day.[201]

In sum, the totality of the evidence establishes that Judge Hastings lied about why he left the L'Enfant Plaza after learning of William Borders' arrest. He did not made any phone calls to his mother or Patricia Williams prior to his rushing from the hotel. He testified falsely in this regard to deceive the trier of fact and should, therefore, be convicted on Article XIV.

---

[199] HXs. 130, 131, 217. The possibility that Judge Hastings was mistaken, and in fact charged his calls to his home or business, or called collect, is refuted by the absence of any charges for such calls on these billing records. 751, HXs. 31, 136, 137.

[200] 805-24, HX. 140.

[201] In addition to the testimony of the hotel's comptroller denying any problem during that day and night, 839-41. there are records that reflect that the system was working, e.g. the bill for the suite occupied by Borders and Judge Hastings and the computer records do reflect a long distance call much later that night from those rooms, and the computer slips for all the hotel's guest calls include calls throughout the day. HXs. 140, 143. For example, a call was placed at 2:29 p.m. to Pennsylvania, and another at 4:00 p.m. to New Jersey. Moreover, there was nothing wrong with the system so far as calls to the area code in which Mrs. Hastings and Ms. Williams lived, as a 10:00 p.m. call reflects. 813, HX. 140.

Article XV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact concerning his motives for taking a plane on October 9, 1981, from Baltimore-Washington International Airport rather than from Washington National Airport.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

Article XV charges Judge Hastings with knowingly testifying falsely concerning why on October 9, 1981 he fled Washington, D.C. via BWI rather than from National Airport. As explained in support of Article I, that motive was not to catch a direct flight to Ft. Lauderdale, but rather to avoid the FBI until he had time to consider the evidence the Government might have against him, and to invent a plausible explanation.[202]

As with the preceding article, the significance of this false testimony pertains to the inference of guilt that could be inferred by the jury from the Judge's manner of fleeing the Washington area.

Judge Hastings knew Washington, D.C. He had attended law school here, and had traveled to Washington many times, flying into and out of National Airport. Accordingly, on October 9, he knew where National was located, and which airlines flew from there to Miami and Ft. Lauderdale. Moreover, he was an experienced traveler; his itinerary for 1981 was so busy that it raises

---

[202] HX. 156 (at 1923).

questions as to how he handled his regular workload. So there is no question he knew how to find out about flights and seat availability. Nevertheless, on the afternoon of October 9, Judge Hastings got into a cab headed for BWI without making any reservations or indeed, without even knowing if there was any hope of getting home that night from Baltimore. Allegedly, he did not consider the possibility that a flight from National, just minutes away from the hotel, would be more convenient. Nor did he mention to Hemphill Pride, who had offered him a lift to the airport, that he meant to go to Baltimore, not National.[203]

In fact, just a few months before, Judge Hastings had returned to Florida on a direct flight from National. On October 9, that same flight was still on Eastern's schedule, and had 14 seats available. Moreover, once at BWI, Judge Hastings did not try to book a flight until an hour after he arrived, and then did so on a non-direct flight. Judge Hastings would have the Senate believe that in his haste to get back home to take care of his mother, he did not take five minutes to find out that he could have gotten back to Florida many hours earlier.[204]

Judge Hastings would also have the Senate believe that it is merely coincidence that the very places he avoided -- the hotel, National Airport and Miami International Airport (where his car was parked) -- were the places the FBI was most likely to look for him. There is also evidence that he never went to his home, despite the

---

[203] HXs. 68-70, 156 (at 1922-23, 2218, 2225); RX. 139.

[204] HXs. 78, 134, 156 (at 2222-23); S.181, S.192, S.267.

fact that he claimed his priority in returning to Florida was to take care of his mother.[205] And, if he had no reason to avoid the FBI, why did he wait for them to figure out where he was, rather than calling, as he had been asked to do? The clear implication is that Judge Hastings was running -- not forever, not to Brazil -- but for long and far enough to give him time to get his wits together, for as he himself admitted, after he learned of William Borders' arrest, he was in a state of shock.[206] That shock arose not from the ambiguous information he learned from Pride,[207] nor from the information he allegedly got from Patricia Williams before he left for the airport, but from his knowledge that the hammer had fallen.

The House of Representatives submits that Judge Hastings is guilty as charged in Article XV.

2. Impact of Article I on Articles II - XV

The final issue to be addressed with respect to Articles II through XV is how a Senator's vote on Article I affects his or her vote on the false statement articles. If a Senator finds Judge Hastings guilty of conspiring with William Borders to obtain a bribe and therefore votes to convict on Article I, that Senator may

---

[205] In his interview later that night with the FBI, Judge Hastings indicated that he called his mother. He made no mention of stopping by, nor did his mother mention that fact when she was questioned by the FBI. See RX. 42.

[206] 2267.

[207] Pride told Judge Hastings only that Borders had been arrested in connection with bribery in his courtroom.

and, in fact, should convict Judge Hastings of lying under oath on any one or all of the next 14 articles. If, however, a Senator votes to acquit on Article I, the question arises whether it is still possible to convict Judge Hastings on any of the false statement articles. The answer is unequivocally yes. A not guilty vote on Article I is not dispositive of all these articles.

The House in no way concedes that Judge Hastings is innocent of the charges brought against him. He conspired with William Borders and lied to the jurors to persuade them otherwise. For the purposes of argument, however, the House will assume that a Senator may vote to acquit on Article I.

What is the impact of such a finding on the next fourteen articles? A decision that the evidence is insufficient to convict on Article I would be dispositive of some, but not all, of the false statement articles. With respect to Articles VI and X through XV, an acquittal vote on Article I is clearly <u>not</u> dispositive, for these seven false statement articles are independent of Article I and require separate, thorough consideration.

If a Senator concludes that the evidence does not sufficiently establish that Judge Hastings conspired with William Borders to obtain a bribe, then that Senator must necessarily accept as true Judge Hastings' explicit denials at his criminal trial of participating in the conspiracy (Articles II-IV). Moreover, a Senator would also have to accept as true the judge's explanations of a) the dinner at the Fontainebleau (Article V), b) his order to

22-307 0 - 89 - 5

Jeffrey Miller to complete the Romano order that day (Article VII), and c) the October 5 conversation involving the "letters for Hemp" (Articles VIII and IX). These portions of Judge Hastings' testimony arguably go directly to his participation in the bribery scheme. A finding that the evidence fails to establish Judge Hastings' participation in that scheme requires a finding that he testified truthfully about this incriminating evidence. Likewise a finding that he testified falsely about any of this evidence would compel a conviction on Article I.

The seven other false statement articles are, however, a different matter. Article VI and Articles X through XV focus on explanations Judge Hastings gave at his criminal trial that are independent of his participation in the corrupt scheme.

All the false statements alleged in Articles VI and X through XV are instances in which Judge Hastings attempted to bolster his defense to explain indirect incriminating evidence. The false statements do not go directly to his participation in the conspiracy. For example, Articles X through XIII are the four alleged phone calls to Hemphill Pride in Columbia, South Carolina. As explained above, Judge Hastings identified these calls to bolster his defense that he was deeply involved in Pride's problems, which led to the draft letters in support of Pride. But even if Judge Hastings was not part of a conspiracy, he still could have knowingly lied about the phone calls in order to have documentary support for his defense.

The same is true with respect to Articles VI, XIV and XV. Article VI charges that Judge Hastings lied when he testified to his surprise at Borders' arrival at the Sheraton Hotel, Article XIV addresses the alleged phone calls to Judge Hastings' mother and Patricia Williams from the L'Enfant Plaza Hotel, while Article XV charges that Judge Hastings lied under oath with respect to why he went to BWI rather than National when he fled Washington, D.C. In each case, the testimony is independent of the sufficiency of the proof of Judge Hastings' participation in the conspiracy. For example, whether or not Judge Hastings made the calls or planned to see Borders on the night of September 12 does not directly show that he was in on the scheme. Thus even if a Senator were to vote to acquit Judge Hastings on Article I, he or she could still find that the judge lied about his knowledge that Borders would return on September 12, fabricated the phone calls and failed to explain truthfully why he avoided National Airport. In short, Judge Hastings lied to the jury to bolster his case.

It is important to realize that each instance of false testimony charged in the false statement articles is more than enough reason to convict Judge Hastings and remove him from office. Even if the evidence were insufficient to prove that Judge Hastings was part of the conspiracy with William Borders, which the House in no way concedes, the fact that he lied under oath to assure his acquittal is conduct that cannot be tolerated of a United States District Judge. To bolster one's defense by lying to a jury is

separate, independent corrupt conduct. For this reason alone, Judge Hastings should be removed from public office.

PART TWO

ARTICLE XVI

DISCLOSURE OF CONFIDENTIAL INFORMATION

Two and a half years after his criminal trial on the bribery conspiracy, Judge Hastings committed a wholly separate impeachable offense, related to his earlier acts of conspiracy and false testimony only in that his reprehensible behavior emanated from the same callous disregard for the law. This additional offense was to disclose to an unauthorized person highly confidential information which he had learned as the supervising judge of a judicially authorized wiretap. Article XVI charges Judge Hastings with this separate intolerable conduct.

A. STATEMENT OF FACTS

1. The Underlying Investigation

In September, 1984, the FBI began an undercover investigation of Local 1922 of the International Longshoremen's Association in Miami, Florida. Through this investigation, the Government sought to explore union corruption, including allegations that kickbacks were being solicited for union membership. This probe led to additional investigations, interconnected by common subjects,

pertaining to zoning corruption in a local municipal government and narcotics involvement in a local police force.[208]

In early 1985, the FBI, working with the United States Attorney's Office in Miami, decided to penetrate Local 1922 using an informant named Johnny Rivero. By July, 1985, Rivero had reported a broad variety of illegal activities, not only confirming corruption within the union, but also corruption in zoning matters in the city of Hialeah, and police involvement in the importation of illegal drugs in North Bay Village, Florida.[209]

It was decided that a wiretap would be needed to identify in advance the time and place for the payoff of corrupt union officials. Accordingly, on July 15, 1985, Assistant United States Attorney Roberto Martinez, who was the attorney in charge of the undercover investigations, applied to the duty judge for that month, Judge Hastings, for an authorization to institute a wiretap under 18 U.S.C. 2516, generally referred to as Title III. It was confidential information Judge Hastings learned through his supervision of this wiretap that he is charged with having disclosed to Dade County Mayor Stephen Clark, as alleged in Article XVI.[210]

---

[208] 1026-27, 1174, 1176-77; S.289.

[209] 1026-27, 1028-30, 1091-92, 1176-77; HXs. 160-61.

[210] 1031-32; HXs. 160-61.

2. Information Provided to Judge Hastings

On July 15, 1985, Judge Hastings was presented with the application for the wiretap and a supporting affidavit, which explained the details and background of the union investigation and its targets, and the need for a court-ordered wiretap. Judge Hastings signed the necessary orders approving the wiretap and, as required by statute, he signed an order placing the documents under seal, thereby rendering the information confidential. In the months that followed, weekly progress reports and a request for an extension of the authorization were also presented to the court; each time, Judge Hastings reviewed and signed the report and placed them under seal.[211]

These reports to the court described the information that had been obtained through the wiretap and related investigation, and included the facts that ultimately and indisputably were disclosed to Mayor Steve Clark. Although the mayor was not a subject of the investigation, the reports frequently alluded to him. On several occasions, these references were also specifically discussed by Judge Hastings and the Federal investigators who presented the reports to him.

The first such discussion occurred when the Second Progress Report was submitted on July 29, 1985 by Assistant U.S. Attorney Roberto Martinez. At that time, Martinez specifically directed Judge Hastings' attention to the part of the report that discussed zoning corruption in the city of Hialeah because it was a new area

---

[211] 1034, 1090-91; HXs. 160-83.

of criminal activity revealed by the investigation. The informant, Rivero, had discussed with Kevin "Waxy" Gordon, a zoning code enforcer in the city of Surfside, Florida, who was one of the targets of the wiretap, the possibility of obtaining zoning changes and licenses for an amusement operation. That enterprise was actually a front established by the FBI to investigate illegal zoning practices in Hialeah. During a discussion of favorable locations for such an operation, Gordon had mentioned the location of another business that Gordon had placed. The report quotes Gordon as saying, "We cheated a little to get him in there to begin with, he's a friend of the Mayor's," meaning Stephen Clark.[212]

On August 15, 1985, the Government applied for a thirty day extension of the wiretap. The supporting affidavit contained the same references to Mayor Clark that had appeared in the earlier weekly progress reports, including the fact that Gordon was reported as having told Rivero that he had Mayor Clark in his pocket, that he had raised $40,000 in contributions for the mayor, and that Gordon was going to approach the mayor for assistance regarding the off-loading of narcotics.[213]

The FBI case agent for the undercover operations, Geoffrey Santini, presented this wiretap extension application to Judge Hastings in his chambers. Judge Hastings remarked that at first, he thought "Waxy" Gordon was the radio station. (At that time, there was a radio station in Miami with the call letters WAXY.)

---

[212] 1028-29, 1036-38; HX. 168.

[213] 1037-38, 1091; HXs. 170, 172-73.

Judge Hastings further stated to Santini that Waxy Gordon was like the radio station: if he "didn't keep his mouth shut, he was going to get everyone into trouble, including the mayor."[214]

In the next submission reviewed by Judge Hastings, dated August 22, 1985, there was a further reference to Mayor Clark in connection with Gordon's illegal plan to obtain zoning changes in the city of Hialeah: Gordon had told Rivero and an FBI undercover agent, "Gino," that in order to take care of zoning problems for the project in Hialeah, as much as $10,000 would have to be paid to the mayor of Hialeah, who is "a close friend of Steve Clark."[215]

The following week, the Progress Report of August 29th contained the another reference to Mayor Clark. At a gathering attended by Rivero, Gordon, Mayor Clark and others, Gordon introduced Rivero to Clark and, in Clark's presence, told Rivero that the mayor would take care of the Hialeah matter. Mayor Clark then said, "If you have any problems with that thing in Hialeah get in touch with me." When asked by Gordon for the name of his contact, Clark responded, "Silvio Cardosa. If you have any problems with him, get back in touch with me."[216]

Assistant U.S. Attorney Martinez presented this report to the judge while he was on the bench. Judge Hastings then indicated that he wanted to speak with him, and they went to the judge's chambers. Once there, Judge Hastings observed, "Pretty heavy

---

[214] 1090-93; S.290.

[215] 1039; HX. 178.

[216] 1041; HX. 179.

stuff." Martinez replied, "Do you mean Mayor Clark?" and the judge answered affirmatively. Martinez then told the judge that Mayor Clark was not a target of the investigation, that he had been introduced by Gordon to Rivero as someone with contacts to Hialeah Councilman Silvio Cardosa who, according to Gordon, would have to be taken care of in order to obtain zoning and licensing changes. Judge Hastings then indicated that he had heard that there were Hispanic politicians in the area that were involved in corrupt zoning practices. Indeed, Hialeah City Councilman Cardosa had been described in the press as being involved in corrupt zoning practices.[217]

Martinez went on to explain the nature of the Hialeah zoning investigation to Judge Hastings -- that Gordon appeared to be well-connected, that he claimed to have made illegal influence payments in the past and that he would do so in this case for Rivero and Gino in connection with the amusement operation. After Martinez remarked that Mayor Clark had walked into the picture when Gordon introduced him to Rivero, and that was the extent of it, Judge Hastings responded, "Clark better be careful because he could get in trouble hanging around Waxy."[218]

The final reference to Mayor Clark prior to the disclosure of information that indisputably took place was submitted to Judge Hastings just one day prior to that leak: in the Progress Report of September 5, 1985, Gordon is reported as again stating that

---

[217] 1040-41, 1071.

[218] 1040-41.

Steve Clark's man in Hialeah was Cardosa. In addition, Gordon told both Rivero and Gino that he had made a connection with the Hialeah Zoning Commission through Mayor Clark, and that if zoning problems arose, they would be handled.[219]

Before the Impeachment Trial Committee, Judge Hastings conceded that the accounts by Assistant U.S. Attorney Martinez and Special Agent Santini as to their conversations with him about the wiretap reports were essentially accurate, that he had reviewed the reports and that his sole source of information about the Hialeah investigation as it involved Mayor Steve Clark was from those discussions and reports.[220]

3. The September 6, 1985 Meeting of Judge Hastings and Mayor Clark

On September 6, 1985, Mayor Clark attended a meeting at the Miami Hyatt Regency Hotel of a community service organization to promote black-white community relations in the Miami area, of which he was a co-founder. Judge Hastings was the guest speaker at the breakfast meeting. It was at that conference that Judge Hastings took Mayor Clark aside, and gave him the warning that he should stay away from "Waxy" Gordon.[221]

Both Judge Hastings and another participant at the conference, Monsignor Bryan Walsh, testified that Judge Hastings spoke with

---

[219] 1043-44; HX. 180.

[220] 1277, 1289-92.

[221] 1122-23, 1283; HX. 189.

Mayor Clark at the conference, prior to Judge Hastings' speech. Mayor Clark recalls the surreptitious conversation with the judge occurring later, after Judge Hastings had delivered his speech.[222]

In any event, Mayor Clark unequivocally testified that on the morning of September 6, 1981, after he greeted the judge, Judge Hastings said to him in a low tone, "Stay away from Kevin Gordon, he's hot, he's been using your name in the Hialeah area." Mayor Clark was astounded and did not respond at all.[223]

4. Mayor Clark Repeats the Disclosure to the Wiretap Subject

After this encounter, Mayor Clark called a colleague, Peter Ferguson, and asked him if he knew how to contact Kevin Gordon and, if he could, to ask Gordon to meet the mayor at 11:30 that morning. Ferguson was able to contact Gordon, and because Gordon was a target of the wiretap, that call was intercepted. The time of the interception was 8:58 a.m.[224]

Upon learning of this call, Special Agent Santini immediately instructed the informant, Rivero, to arrange to meet Gordon at the appointed time and place to learn why Mayor Clark wanted to meet with Gordon. Although he was unable to hear the discussion, Rivero

---

[222] 1123-24, 1169-73.

[223] 1123-24.

[224] 1095, 1124; HXs. 185a-b.

reported that after the meeting Gordon was extremely upset and avoided Rivero.[225]

At that meeting, Mayor Clark confronted Gordon with the information he had learned from Judge Hastings. Mayor Clark asked, "What are you trying to do to me? I understand you're using my name for influence out in the Hialeah area, and if you are, you'd better stop." In the face of Gordon's denials, the mayor then informed Gordon that he had it from a "very authoritative source that you're using my name in the Hialeah area." Gordon pressed the mayor for the source of his information. Ultimately, Mayor Clark told him that the information came from a Federal judge. After further pumping, Mayor Clark finally told Gordon his source was Judge Alcee Hastings.[226]

Gordon was visibly shaken by this information; he turned white and the conversation then ended.[227]

5. The FBI Learns of the Leak

The FBI learned of the leak to Mayor Clark only because three days later Gordon recounted his discussion with the mayor in a conversation on one of his wiretapped telephones. In a call at 9:23 a.m., on September 9, 1985, Gordon told an acquaintance that his meeting with Mayor Clark, "Wasn't good news, wasn't bad news, but it was in fact it was probably a favor. Just tipped me off to

---

[225] 1104.

[226] 1124-25.

[227] 1124-25.

. . . ." Gordon then said he would call the friend back, stating that he did not trust the phone.[228]

About an hour and a half later, Gordon called back on another telephone (which also was tapped) and told his friend that Mayor Clark had told him that Alcee Hastings, a Federal judge, had talked to him, and that there was a rumor that Gordon was involved with Clark, Ferguson and some councilman in Hialeah on some deal. Gordon then said that the only thing in which he was involved in Hialeah was on "a new item for this guy from Houston," and which had to do with mitigating a zoning problem.[229] Gordon was puzzled, claiming that he had not done anything illegal on the deal and that Clark was not involved. Gordon then observed that for a Federal judge to know of the matter, it had to be "pretty high in the Justice Department or someplace." Gordon's friend noted that the investigation into zoning in Hialeah had been a big deal in the newspaper six or seven months earlier. Gordon then wondered aloud how his name had been put in to it.[230]

After listening to the tape of the two calls between Gordon and his friend, Special Agent Santini immediately contacted Rivero and instructed him to watch out for himself, that there could be a problem and to try to contact Gordon to find out what was going

---

[228] HXs. 186a-b.

[229] The FBI undercover agent, Gino, who was trying to obtain assurances that necessary zoning approval would be obtained for the amusement project, had posed as being from Houston. 1029; S.318.

[230] HXs. 187a-b.

on. Agent Santini did not, however, inform Rivero of the nature of the problems. Precautions were then taken to protect Rivero.[231]

On the following day, September 10, 1985, Rivero met with Gordon. Gordon appeared to be very upset and he patted Rivero down. He then told Rivero that on the previous day, Judge Hastings had asked Mayor Clark if he knew Kevin Gordon, and then the judge told him that Gordon's home and office phones were wired. When Rivero reported this back to Agent Santini, he was extremely agitated and fearful.[232]

Gordon also became highly suspicious of Gino. Gordon later told the FBI that after Mayor Clark made the disclosure to him, he went to check out Gino's local office, which increased his suspicion and anxiety. This statement corroborated an intercepted call made by Gordon right after the September 6 meeting, in which Gordon stated that the meeting with Mayor Clark had gone badly, and the next day was also a very bad day. Gordon confirmed in his interview with the FBI that this had been the day he had investigated Gino's business.[233]

6. The Compromise of the Underlying Investigations

It was now apparent that Gordon had immediately recognized the significance of the information Mayor Clark had passed along, even going so far as to surmise that a wiretap on his telephones

---

[231] 1104.

[232] 1104-05, 1107-08, 1175-76.

[233] 1180.

had been ordered. Two of the three undercover operations were now compromised.[234]

Representatives of the FBI, the Public Integrity Section of the Criminal Division of the United States Department of Justice, a the United States Attorney's Office in Miami met to determine whether the undercover investigations could continue. Since Gordon was the central figure in the Hialeah probe, and had immediately suspected Gino after the disclosure became known, there was no alternative but to close this investigation. Gordon had also played a role in the union investigation, having unsuccessfully tried to get Rivero admitted to the union through his political contacts. In addition, he had introduced Rivero to the target who was attempting to get Rivero on the docks through his mob connections. Particularly given the violent nature of some of the suspects, who included organized crime figures, the investigation had become too risky for Rivero, the undercover informant, so it too, had to be terminated immediately. The cocaine deal involving corrupt North Bay Village police officers engaging in drug smuggling was considered to be sufficiently isolated from Gordon to continue.[235]

7. The Investigation of the Leak

After decisions were made as to the course of the three on-going undercover investigations, and after Rivero had corroborated

---

[234] 1047, 1107-08.

[235] 1046, 1176-77.

the interception of September 9, 1985, the Government was faced with investigating the leak. The approach was to focus on the other participant in the September 6 conversation with Gordon: Mayor Steve Clark. The investigators decided to wire Rivero to record conversations with him.[236]

On October 11, 1985, Rivero attempted to speak to the mayor. However, the mayor's colleague, Peter Ferguson, and another individual interceded. They stopped Rivero in his tracks, told him to put his cards on the table and tried to convince him that Judge Hastings had not told Mayor Clark anything.[237]

Because Rivero then appeared to be under heavy suspicion, the Government decided to seek Gordon's cooperation. To induce his help, the investigators pursued Gordon's previously stated offers to Rivero to obtain narcotics. Rivero thereafter bought drugs from Gordon on two occasions. On November 18, 1985, Gordon was confronted with the narcotics transactions and he agreed to cooperate. Gordon was then debriefed, and he agreed to assist fully both with respect to the leak investigation and any other potential illegal activities in which he was involved.[238]

In his interviews, Gordon confirmed the content of his September 6 conversation with Mayor Clark, and acknowledged that this had made him suspicious of his telephones and of Gino. Gordon consented to wear a body recorder and to attempt to engage Mayor

---

[236] 1178.

[237] 1178-79, 1194-95.

[238] 1178-80.

Clark and Ferguson in conversations about the disclosure. On December 18, 1985, Gordon and Ferguson met and discussed this matter. In that conversation, Ferguson stated that he thought Rivero could not be trusted, that he was a DEA agent. With respect to Gino, Ferguson also voiced distrust. After Gordon asked Ferguson who he thought was the source of the information, Ferguson concurred with Gordon that Judge Hastings was involved.[239]

On January 17, 1986, Gordon recorded a conversation with Mayor Clark about the leak. In that discussion, Mayor Clark essentially repeated to Gordon what he had told him on September 6: while at a function at the Hyatt Regency Hotel, where Judge Hastings was a guest speaker, the judge had warned Clark not to get near Gordon, because Gordon was involved in some zoning in Hialeah, and he had problems.[240]

Gordon died of a heart attack on February 20, 1986, so further attempts to have him record conversations were precluded. Shortly thereafter, the FBI made their arrests in the North Bay Village case. The following day, the leak investigation went overt, with the FBI conducting simultaneous interviews of Mayor Clark, Peter Ferguson, the friend Gordon had spoken to on September 9 about the disclosure, and the individual who had joined Ferguson in preventing Rivero from talking to the mayor on October 11. Mayor Clark reiterated that it was Judge Hastings who had warned him to

---

[239] 1180-1185; HXs. 193a-b.

[240] 1185; HXs. 194a-b.

22-307 0 - 89 - 6

stay away from Gordon. The information from the other interviews also corroborated the earlier evidence.[241]

At this time, Mayor Clark consented to wear a body recorder and tape a conversation with Judge Hastings. Upon further reflection, however, because of concerns about his health, he changed his mind. He did, however, testify in the grand jury, and his statement there was consistent with his earlier recollections of the discussion with Judge Hastings.[242]

Thereafter, the FBI interviewed three people who were listed on the program of the September 6 conference at the Hyatt Regency Hotel. These interviews confirmed that Mayor Clark was present at the conference at which Judge Hastings had given a speech. There were conflicts among those interviewed as to the time and length of that speech. Further interviews were not conducted, however, to protect Judge Hastings and Mayor Clark from rumors spreading in the community.[243]

Subsequently, the Department of Justice decided to attempt to interview Judge Hastings. On May 19, 1986, FBI Special Agent Christopher Mazzella spoke to Judge Hastings about this matter.[244] Mazzella told Judge Hastings that the Public Integrity Section of the Department of Justice had asked him to contact the judge in

---

[241] 1186-87.

[242] 1186-87.

[243] 1187-88.

[244] Judge Hastings had his court reporter listen to and transcribe the conversation. 1189-90; HX. 223.

order to set up an appointment to discuss the matter addressed in a March Miami Herald article, which pertained to the disclosure to Mayor Clark of information related to a wiretap supervised by Judge Hastings. Mazzella advised the judge that he was the supervisor of the wiretap case agent, Geoffrey Santini.[245]

Judge Hastings told Special Agent Mazzella that inasmuch as the subject pertained to a Title III matter, it would be unlawful for him to discuss the matter with Mazzella, a contention he repeated before the Impeachment Trial Committee. However, as the supervising agent of the investigation that was the subject of the wiretap, Mazzella had participated in the preparation of the affidavit and other documents presented to Judge Hastings, and he was privy to all the information gleaned from that wiretap. There was no legal reason why Judge Hastings could not discuss the wiretap with Special Agent Mazzella. Moreover, Mazzella was calling to discuss the leak of information, not the contents of the wiretap documents themselves.[246]

In the May 19, 1986 call, Judge Hastings told Mazzella that he would, however, talk with representatives of the Public Integrity Section. But when Eric Holder of that section called Judge Hastings the following day, the judge declined to be interviewed, stating that Holder would have to do whatever he

---

[245] 1189-91; HX. 223.

[246] 1191-92, 1298-99; HX. 223.

planned to do without Judge Hastings' assistance, and that he [Hastings] knew how the Department of Justice worked.[247]

8. The Costs of Disclosure

The few words uttered by Judge Hastings to Mayor Clark in a chance meeting at a downtown Miami hotel were to have an expensive and lasting impact on Federal law enforcement efforts to combat South Florida's most intractable areas of crime. Some of those costs were calculable -- extensive manpower and other resources had been committed to the union investigation for over a year, and nearly as long in the Hialeah case. The cost of the wiretap alone was in excess of $300,000.[248]

Equally costly, however, was the chilling effect on the FBI's ability to develop informants and cooperating witnesses. This was true not only in the abstract, but also with respect to specific persons who previously had provided invaluable help. In the union investigation, at the time of the leak, the FBI's effort to get Rivero into the union was about to be assisted by another informant, a high level official of the International Longshoreman's Association, who had agreed to vouch for Rivero. After learning of the leak, Special Agents Mazzella and Santini advised the ILA informant that the investigation might be compromised, and then gave him the option of going forward with the

---

[247] 1301-02; HX. 223; S.378.

[248] 1175-78.

vouching. Understandably, the informant decided he wanted no part of the effort.[249]

The leak also meant lost opportunities. Not only was the union investigation lost, so, too, was the investigation of local corrupt zoning practices in Hialeah. In the North Bay Village investigation, arrests were eventually made, but because of the need to investigate the leak, it was terminated prematurely. The FBI was prevented from using the undercover scenario to expand the investigation into related areas of police corruption.[250]

The disclosure also created a perhaps irremediable breach of trust within the criminal justice system. The most immediate evidence of this was the fact that the U.S. Attorney's Office in Miami was forced to submit false progress reports to Judge Hastings pending the leak investigation, with the full reports being submitted to the Chief Judge of the court. Former Assistant U.S. Attorney Martinez described the sense of betrayal he now feels in his dealing with Judge Hastings, going so far as to say that he believes that the respondent's continued presence on the bench is dangerous. This belief apparently was shared, for after the leak, no political corruption matters, wiretaps, or in camera submissions of sensitive matters were presented to Judge Hastings, so far as Martinez was aware. Special Agent Santini echoed this concern when he testified that because his oath of office and conscience preclude him from placing undercover agents and informants into

---

[249] Id.

[250] 1177-78.

22-307 0 - 89 - 7

dangerous situations, he would no longer present applications for wiretaps to Judge Hastings.[251]

B. ARGUMENT: ARTICLE XVI

From July 15, 1985, to September 15, 1985, Judge Hastings was the supervising judge of a wiretap instituted under chapter 119 of title 18, United States Code (added by title III of the Omnibus Crime Control and Safe Streets Act of 1968). The wiretap was part of certain investigations then being conducted by law enforcement agents of the United States.

As supervising judge, Judge Hastings learned highly confidential information obtained through the wiretap. The documents disclosing this information, presented to Judge Hastings as the supervising judge, were Judge Hastings' sole source of the highly confidential information.

On September 6, 1985, Judge Hastings revealed highly confidential information that he learned as the supervising judge of the wiretap, as follows: On the morning of September 6, 1985, Judge Hastings told Stephen Clark, the Mayor of Dade County, Florida, to stay away from Kevin "Waxy" Gordon, who was "hot" and was using the Mayor's name in Hialeah, Florida.

As a result of this improper disclosure, certain investigations then being conducted by law enforcement agents of the United States were thwarted and ultimately terminated.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

There is no question that Mayor Clark was given information about an ongoing undercover investigation, which involved a Federal wiretap supervised by Judge Hastings. The only issue is whether the mayor, who has repeatedly stated that his source was the judge himself, is to be believed.

---

[251] 1046-47, 1061, 1069, 1105-06.

It is the circumstantial evidence supporting the mayor's accusation that compels the conclusion that Judge Hastings is guilty of the charge contained in Article XVI, not only because most of this damning evidence is undisputed, but also because no other explanation is plausible.

1. Undisputed Facts Corroborate Mayor Clark's Identification of Judge Hastings as His Source.

The evidence overwhelmingly establishes Judge Hastings' guilt with respect to Article XVI, particularly in light of the wealth of undisputed facts that corroborates Mayor Clark's testimony. There is no disagreement that Judge Hastings and Mayor Clark had the opportunity to discuss the matter on the morning of the September 6 conference, as alleged by Mayor Clark. It is also undisputed that as a result of his role as the supervisor of the wiretap, Judge Hastings was one of a very limited number of persons who had been provided with the information that Mayor Clark later repeated to Kevin "Waxy" Gordon. More significantly, Judge Hastings concedes that in his discussions with Assistant U.S. Attorney Martinez and Special Agent Santini, he focused on and discussed the precise facts that were relayed to Mayor Clark -- that Gordon was "hot," i.e. under investigation, that Gordon was using the mayor's name, and that this was occurring in Hialeah. The fact that it was precisely these matters, and no others, that Judge Hastings focused on in his discussions with Federal investigators is no mere coincidence. Indeed, it was Judge

Hastings, not Martinez and Santini, who brought up the mayor's name in their discussions of the wiretap reports.

Thus, just a little over a week after Judge Hastings told Martinez that "Clark better be careful because he could get in trouble hanging around Waxy," Clark was told not to hang around Waxy. Two weeks before that, Judge Hastings told Santini that if Waxy "didn't keep his mouth shut, he was going to get everyone into trouble, including the mayor." In the report of September 5, the report that would be most fresh in Judge Hastings' mind at the time of his encounter with Mayor Clark on September 6, Waxy claimed that he could influence zoning decisions in Hialeah through Mayor Clark. Thus, Judge Hastings prediction had come true -- Gordon was talking too much, getting the mayor into trouble, perhaps unfairly. Through some misguided logic, Judge Hastings apparently thought it was his obligation to do something more than complain to the investigators about the mayor's predicament.[252]

Further support for Mayor Clark's version of the events is that immediately after the September 6 meeting at the Hyatt Regency, the undercover operations fell apart. This, too, is undisputed. Gordon immediately began to suspect that undercover agents were in their midst, as indeed they were. This contrasted sharply with the success previously obtained in the undercover operation. Prior to September 6, 1985, there had been no indication that confidential information from the wiretap or the

---

[252] 1040-41, 1043-44, 1083-85, 1090-93, 1282-83, 1289-92; HXs. 160-83, 180.

investigation had been disclosed. In fact, the indications were to the contrary: the wiretap had been extremely productive and additional crimes in many areas were being discovered.

Finally, it is undisputed that Mayor Clark has never had a motive to harm Judge Hastings. The mayor's lack of motive is evident not only from the fortuitous manner in which his accusation became known, but also from the absence of animus between the men. In fact, they barely knew each other. Even Judge Hastings could not speculate as to why Mayor Clark would falsely accuse him.[253]

2. No Other Explanation is Plausible

Perhaps the most persuasive corroborating factor, however, is that given these undisputed facts, no other explanation makes sense. To believe that Judge Hastings is not the source of the leak, one must not only believe that Mayor Clark was lying, but also that either a bizarre and complicated series of coincidences or a deliberate plot occurred. That is, it is not sufficient to merely speculate as to who besides Judge Hastings had access to the wiretap reports. A plausible alternative explanation must also take into account the timing and consequences of the leak, and its particular content. In short, Judge Hastings' attempt to question Mayor Clark's account is only smoke.

---

[253] 1123, 1284-85, 1292-93.

a. The Dramatic Change in the Course of the Underlying Investigation Dates from September

An alternate explanation would first have to explain why and how Mayor Clark's repetition of the disclosure to Kevin "Waxy" Gordon came to coincide with Mayor Clark's meeting Judge Hastings, an event that the judge agrees was a rarity. If the mayor's source was not the judge, that source would have had to tell Mayor Clark that Judge Hastings was the supervising judge of the wiretap. Otherwise, Mayor Clark's blaming the leak on the judge would carry no weight. Then Mayor Clark would have to see Judge Hastings. Given the fact that no change in the behavior of the targets occurred until September 6, Mayor Clark would have had to sit on the information until the day when he knew he was going to see the judge. Such a course of events is not merely highly unlikely, it defies common sense.

b. No Other Potential Source Had Access to All the Information

Not withstanding the above, Judge Hastings suggests that Mayor Clark obtained the warning from someone else. Although the judge did not argue in support of a particular alternative, several theories were suggested or implied through the evidence which he presented to the Impeachment Trial Committee. All of them are implausible. None undermines the conclusion that Judge Hastings disclosed the confidential information.

(1) The Golfing Connection

Judge Hastings' most favored theory seems to be that because Mayor Clark played golf on a regular basis with a foursome that

included two FBI agents, someone in the bureau was his source. An additional fact was presented in support of this theory: on July 23, 1985, about a week after the wiretap was approved, the fourth member of the golfing group, Glen Whittle, called the FBI and asked if the mayor and Peter Ferguson were under investigation. In this call, Whittle claimed as his source yet another golfing acquaintance of Clark's, H. Paul Rico, the former FBI agent who had impersonated Frank Romano in the bribery conspiracy investigation.[254]

While these coincidences invite speculation, if not suspicion about the mayor's veracity, other evidence quickly lays this concern to rest. First, the mayor was not under investigation, nor was his colleague, Peter Ferguson. Therefore, there was nothing for the FBI agents to disclose. Indeed, in July, 1985, the only mention of C[redacted] in the wiretap reports was innocuous, that Ferguson had been his campaign manager.[255] More importantly, if there was a leak in July, as Judge Hastings seems to contend, it is inconceivable that Mayor Clark would ignore the warning to stay away from Gordon and agree a month later to Gordon's request that he assist Gino with respect to a zoning matter in Hialeah. The

---

[254] 1318-19.

[255] 1194.

progress of the undercover investigations belie a July disclosure.[256]

Moreover, even if the alleged FBI leak had nothing to do with the July 23 inquiry, it had to have occurred sometime after August 22, for one can hardly assume that the mayor would intentionally implicate himself just to bide his time to blame Judge Hastings for the leak. However, none of the agents who golfed with Mayor Clark were even working on the underlying investigation and, indeed, by the end of August, the mayor was not even playing golf with his FBI friends.[257] Finally, it is highly unlikely that FBI agents and former agents would compromise ongoing investigations, and place undercover operatives and their fellow agents in mortal danger.

(2) Unexplored options

Judge Hastings further suggests that he should be acquitted on Article XVI because the FBI and Department of Justice focused their attention exclusively on trying to establish whether he was the source, rather than exploring other possibilities. By implication, for example, the judge suggests that perhaps a telephone company employee knowledgeable about wiretaps or an agent monitoring the wiretap learned the information and disclosed it.

---

[256] On August 22, 1985, Rivero was introduced by Gordon to Mayor Clark, and after a private discussion between Gordon and Clark, the latter offered to take care of the Hialeah matter through his contact, Silvio Cardosa. This, of course, was precisely the kind of action that a forewarned person would avoid.

[257] Then Special Agent Anthony Amoroso was advised in August that Mayor Clark's name had come up in an investigation, and therefore, he should forgo playing golf with him, which he did, as did the second agent. 1355.

All of this is mere speculation. A review of the progress reports indicates that the information pertaining to Mayor Clark came primarily from meetings Rivero had with Gordon, not from the wiretap itself, so that eavesdropping on the wiretap would not be sufficiently enlightening. Could the source have been a clerk who typed or filed the confidential reports as further speculated by Judge Hastings? No, for the mayor knew no one in the courthouse, nor is there any evidence that any employee made such a disclosure. Could the participants in those discussions, Martinez and Santini, have leaked the information, intentionally or inadvertently? To assume this is possible, one must assume that either the Assistant U.S. Attorney or the FBI case agent would not only repeat his conversations with the judge to others, but also would jeopardize the safety of their own informants and FBI undercover colleagues, and destroy months, if not years of their own efforts.[258]

The House submits that pursuing such inquiries would have been nothing more than boxing at shadows and might very well have endangered the only plausible lead the investigators had. In any event, however, the issue for the Senate is not whether more could have been done, but whether the evidence against Judge Hastings is sufficient.

---

[258] HXs. 160-83.

3. Possible Factual Errors in Mayor Clark's Account do not Undermine his Credibility

Mayor Clark has repeatedly and unequivocally stated that Judge Hastings was his source; he has had no apparent motive to fabricate this allegation; and the timing and circumstances of the leak and the history of the underlying investigation all suggest there is no plausible alternative source of the information. The sole grounds upon which Judge Hastings has staked his attack on the mayor's credibility derives from the fact that Mayor Clark recalls the discussion with the judge as having occurred after the judge delivered his speech, not before.

The House does not dispute that there is evidence in the record that challenges Mayor Clark's recollection of the timing of the disclosure, including the fact that the call to Gordon setting up the meeting with the mayor was intercepted at 8:58 a.m., whereas the program indicated that Judge Hastings' speech was not to begin until after 9:05 a.m. Assuming that the program did not begin early, does the fact that the mayor is mistaken with respect to this aspect of his recollection mean that he fabricated the whole thing? The answer is no.[259]

First, as Special Agent Mazzella testified, witnesses get the sequence of events mixed up all the time. Indeed, one of the respondent's own witnesses did just that: in the bribery/false testimony part of the impeachment trial, Margaret Dabreau Owens testified that William Borders joined the group at the Sheraton

[259] HX. 189.

Hotel on September 12, 1981, after they were already in the restaurant, a version of events at odds with every other witness, including Judge Hastings. Just as there is no reason to believe that this error suggests that Mrs. Owens is lying about the more important fact that Borders appeared by the Sheraton that night, there is no reason to assume that Mayor Clark fabricated his account of the disclosure by Judge Hastings.[260]

Second, Mayor Clark was not called upon to remember the precise circumstances of the September 6 discussion until he was interviewed by the FBI on February 27, 1986, over five months later. By that time, he recalled the warning coming after the judge had given his speech, but references in the surreptitiously recorded conversation of January 17, 1986, suggest that at an earlier time, he may have recalled the circumstances somewhat differently. In that taped discussion, Mayor Clark says to Gordon that the discussion took place as people were greeting each other: "And everybody's saying 'hello judge' and he comes and says Stevie I want to tell you something . . ." This suggests that the warning came at the start of the conference, when both Monsignor Walsh and Judge Hastings recall them being together. If so, the timing coincides precisely with the call Ferguson made to Gordon setting up the meeting later that morning.[261]

Mayor Clark has no recollection of being with Monsignor Walsh and Judge Hastings prior to the start of the conference. Rather

---

[260] 1188, 1404, 1414.

[261] HX. 194b.

than suggest fabrication, however, this mistake bolsters the conclusion that the mistake as to the sequence of events arises from his having a generally dim recollection of most of the events of that morning other than the critical facts, not surprising for a older man in poor health, who attends hundreds of similar meetings every year. With respect to the critical fact -- that Judge Hastings warned him that morning about Gordon -- Clark has been entirely consistent, in both public and private accounts, at times when his veracity has been challenged and at times when he had no reason to believe he would be overheard. It is that consistency which is the true test of his accuracy and credibility.[262]

4. The Intentional Unauthorized Disclosure of Confidential Information by a Federal Judge is an Impeachable Offense

Finally, it has been suggested by a member of the Impeachment Committee that even if Judge Hastings did disclose this information, the action does not rise to the level of an impeachable offense.[263] The House vigorously rejects this position. Indeed, Judge Hastings himself argued this point:

> . . . I believe that the breaching of confidential aspects of wiretaps or anything else that is confidential in the courts should rise to the level of an impeachable offense. I believe that judicial accountability ought to be always on the table and judges should be circumspect and above reproach, and I believe that that is an important facet in a person being a United States District Court judge, and if he or she can't function

---

[262] 1131, 1133.

[263] 1261-62.

> along those lines, not only if they breach those confidences should they be impeached, I believe they ought to be railed into a posture of ignominy in their respective communities.[264]

In this case, the breach of trust was not only a violation of Judge Hastings' oath of office, but it was in reckless and callous disregard of the lives of innocent people. The fact that any leak in these investigations could be life-threatening to the undercover informant and agents and could alert the subjects to the probe was implicit, if not explicit, in the materials submitted to Judge Hastings. For example, the initial wiretap application and supporting affidavit had noted that some of the targets were both suspicious of outsiders, and potentially dangerous. The police in North Bay Village, suspected of corruption, were armed and in a position to claim that any shooting in connection with the narcotics undercover scenario was part of a lawful arrest. The personal backgrounds of some of the subjects and an earlier successful investigation of corruption in the union also explained their suspicions of outsiders and their potential for violence. One target was identified as the son of a leading organized crime figure and the union member controlling "bookmaking, shylocking and fencing" operations at the Port of Miami; a second was the secretary-treasurer of Local 1922 and son of the former office manager of Local 1922 who had been convicted of racketeering, racketeering conspiracy, extortion, and Taft-Hartley Act violations; another described himself as a member of "La Cosa

---

[264] 1316.

Nostra." The suspicious attitude of the targets of the investigation was graphically illustrated to Judge Hastings by the report that Rivero had been patted down for recording equipment several times, including once by an organized crime figure whom the FBI intended as the recipient of the payoff to obtain Rivero's union admission. This pat-down had occurred in the presence of police from North Bay Village.[265]

Thus, based on the information contained in the reports, there could have been no question in Judge Hastings' mind that this was an operation fraught with danger, where the need for secrecy was paramount. That the judge would ignore these warnings, and casually pass along enough of the secret information to alert the suspects, compounds his misconduct. Why he did this is not known. Neither money nor friendship seems to have played a part. Others have speculated that the disclosure arose out of feelings of distrust of the same investigative process that had previously prosecuted him, or from a desire to do a favor for a fellow politician that might someday be repaid in kind. But whatever the motive, it is clear that by this act, the breach of faith by Judge Hastings is complete and irreversible, rendering him unfit for the office he has disgraced.[266]

---

[265] 1027, 1094-95; HXs. 160-61.

[266] 1079-80, 1231-32.

PART THREE

ARTICLE XVII

Judge Hastings, who as a Federal judge is required to enforce and obey the Constitution and laws of the United States, to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to perform the duties of his office impartially, did, through --

(1) a corrupt relationship with William Borders of Washington, D.C.;
(2) repeated false testimony under oath at Judge Hastings' criminal trial;
(3) fabrication of false documents which were submitted as evidence at this criminal trial; and
(4) improper disclosure of confidential information

acquired by him as supervisory judge of a wiretap; undermine confidence in the integrity and impartiality of the judiciary and betray the trust of the people of the United States, thereby bringing disrepute on the Federal courts and the administration of justice by the Federal courts.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

The final Article of Impeachment is the so-called "omnibus" article. The totality of Judge Hastings' conduct -- his corrupt relationship with William Borders, his repeated false testimony at his criminal trial, his fabrication of evidence at his criminal trial, and his disclosure of confidential wiretap information -- demands that he be removed from the Federal bench.

Article XVII rests on the same evidence adduced in support of Articles I through XVI. Judge Hastings' misconduct, starting in 1981, continuing in 1983 and repeating in 1985, has been proved by overwhelming evidence. Conviction on Article XVII, however, rests

on a separate legal theory, which has roots deeply imbedded in the Senate's impeachment power.

An article of impeachment that asserts a pattern of misconduct, rather than just one corrupt act, allows the Senate to consider the totality of a Federal officer's behavior and its impact on the body politic. A Senator may believe that removal from office is required not only for the commission of a single offense, but also because of the impact of continued misdeeds on the Federal judiciary. Or, a Senator may believe that the separate acts standing alone do not justify removal from office, but all the misdeeds taken together justify conviction.

In every impeachment trial in the 20th century that resulted in conviction, the Senate has voted for an article that included several acts of misconduct, including acts that were separately alleged in other articles. The Senate has therefore recognized that an omnibus article is a separate and important basis for removing a corrupt official from public office in an impeachment proceeding.[267]

---

[267] In the impeachment of Judge Robert W. Archbald, the Senate found Judge Archbald guilty of the charges in five of thirteen Articles of Impeachment, including the catch-all thirteenth. Cong. Rec. 62nd Cong., 3d Sess., January 13, 1913, at S1627-47.

In the impeachment of Judge Halsted Ritter, all of his acts of misconduct were pleaded in the final article of impeachment primarily by cross-reference to the preceding articles. The Senate acquitted Judge Ritter on each of the first six articles, but found him guilty of the omnibus article. Cong. Rec., 74th Cong., 1st Sess. March 31, 1936 at S637-38.

Most recently, in the impeachment of Judge Harry Claiborne, the Senate convicted Judge Claiborne on Article IV, the omnibus article, as well as on the articles that separately alleged the

In this case, Judge Hastings has engaged in a course of conduct indicating that he believed he was above the law. In 1981, the judge put justice up for sale, by participating in a corrupt conspiracy to obtain a bribe from criminal defendants appearing before him. In 1983, when confronted with his crime, he repeatedly lied under oath to escape punishment. One month prior to his criminal trial, Judge Hastings produced fabricated evidence -- the "letters for Hemp" referred to in the October 5, 1981 recorded conversation -- which he presented to the jury. And, in 1985, Judge Hastings undermined ongoing and dangerous law enforcement investigations by disclosing confidential information which he was privy to solely because of his position as a Federal judge.

Through these actions, Judge Hastings has not only tarnished his personal reputation as a member of the Federal judiciary, but he has also brought his court and the entire Federal judiciary into disrepute. Judge Hastings' conduct undermined the integrity and impartiality of the Judicial Branch of our Government. To restore that integrity and to protect the American public, the Senate should convict Judge Hastings on Article XVII.

---

individual acts of misconduct. Proceedings of the United States Senate, 99th Cong., 2d Sess., S. Doc. 99-48, 1986, at 291-98.

PART FOUR

ADEQUACY OF THE RECORD

As part of his defense to the charges related to the Romano bribery scheme, Judge Hastings complains that the record is incomplete, naming witnesses who have either died or are no longer competent to testify, and citing records which are no longer available. These arguments are simply smoke. The judge is attempting to cloud the true issue of his role as Borders' co-conspirator in the bribery scheme.

What Judge Hastings ignores in his argument that it is somehow inequitable for the Senate to consider the Articles of Impeachment on the current record is that this issue has already been resolved by the Senate. In a nearly unanimous vote of 97 - 1, the Senate rejected Judge Hastings' motion to dismiss Articles I through XV of the Articles of Impeachment. One of the two grounds put forth by respondent in that motion was that the delay between the time of the offenses and time of the impeachment proceedings was so great and the impact of that delay was so prejudicial, that trial on these matters should be precluded. Judge Hastings' position had no support in the law and was soundly rejected by the Senate.

The defense of unwarranted delay does not apply to the Federal government in a suit to enforce a public right or protect the public interest because the public interest -- in this case the integrity of the Federal judiciary -- is preeminent. Even if there were a factual basis for arguing unreasonable delay, relief on those grounds would be precluded in an impeachment proceeding. In

this case, however, there is no factual basis for respondent's complaint. Judge Hastings' impeachment falls well within the bounds of precedent in prior impeachments.[268] Such delay as there was in the adoption of the Articles of Impeachment in this matter was not the result of unreasonable or inexcusable delay by the House. To the contrary, much of the time lapse stemmed from litigation initiated by respondent or engendered by his opposition to the disclosure of grand jury and other documents. The Senate, therefore, correctly rejected Judge Hastings proposition that a Senate impeachment trial was barred on equitable grounds.[269]

The House presumes, therefore, that Judge Hastings is arguing that even though prosecution in the Senate is not barred because of the passage of time, the record is so incomplete that it is impossible for the Senate to reach a fair and true verdict in this matter. This proposition is unsupported. To the extent that there

---

[268] In the American experience, there have been at least three impeachment proceedings in which the time between the charged offenses and the adoption of articles was the same or greater that the seven years at issue in this case. In the impeachment of Judge Charles Swayne, two of the six articles alleged offenses that occurred more than twelve years prior to the impeachment. See, Impeachment of Charles Swayne, Proceedings in the House of Representatives (1903-1905), 66th Cong., 2nd. Sess. 635 (1912). Similarly, in the impeachment of Judge Halsted Ritter, the alleged offenses occurred five to seven years prior to the adoption of articles, and in the recent impeachment of Judge Harry Claiborne, the offense alleged in one of the articles occurred six years before the article was adopted by the House. See, Official Conduct of Judge Halsted L. Ritter, Trial and Impeachment, 1933-36 at 628; S. Doc 99-48, 99th Cong. 2d Sess. at 2 (1986).

[269] For a full discussion of this issue, see Response of the House of Representatives to Respondent's Motion to Dismiss Articles I through XV, S. Doc. 101-4, 101st Cong. 1st Sess. (1989) at 33 - 44.

is harm resulting from unavailable records or dimmed recollections, both parties are hampered in their presentation of the case. The testimony relating to the period of the conspiracy from March, 1981 to September 10, 1981, for example, has not been preserved for either party.[270] More importantly, in spite of respondent's freewheeling speculations about the facts which might be proved by the "missing evidence," even the "missing evidence" could not explain away the damning evidence of Judge Hastings' complicity. What missing witness could explain Judge Hastings' conduct at the Fontainebleau on the night of September 16, or account for the hurried issuance of the October 6 forfeiture order shortly after it was promised by Borders, or interpret the coded conversation between Judge Hastings and Borders on October 5, 1981? What unavailable records or witnesses can make sense of Judge Hastings' bizarre pay phone to pay phone call on April 9, or explain Borders' detailed knowledge of the forfeiture matter, or justify Judge Hastings' irrational flight from Washington via BWI on October 9?

The House submits that the conjecture as to what witnesses might have testified to or records might have shown cannot satisfactorily explain the overwhelming incriminating evidence that Judge Hastings is guilty as charged of conspiring with William Borders to sell his office. For example, Judge Hastings suggests

---

[270] Similarly, in response to Judge Hastings' explanation, made for the first time before the Impeachment Trial Committee, that his call on October 12 was made at the behest of his mother to the mother of William Borders, the House might speculate that Alberta Borders, like Mildred Hastings, had a separate telephone of her own. There are no telephone records, however, to conclusively determine that fact.

that the testimony of Joseph Nesline and the Romano brothers would have shed light on the sources from whom Borders might have gained the "insider" information he had about the Romano forfeiture order. But the information that Nesline could have obtained from the Romanos would not have provided the details that William Borders knew. For example, the Romanos could not know the timing or amount of the forfeiture reversal, issued on October 6, 1981. That information would have to had come from a select few members of Judge Hastings' staff, all of whom deny any such disclosure (which Judge Hastings does not dispute). Further, why would Borders offer the forfeiture orders as proof of his control of the judge if he was receiving the information, through Nesline, from the Romanos, the very targets of his bribery scheme? Likewise, the missing telephone records for Hemphill Pride, Joseph Nesline and William Borders could do no more than provide additional contacts between persons who were admittedly in communication with each other.

Accordingly, the House of Representatives submits that the record before the Senate is more than adequate upon which to base the conviction of Judge Hastings on each of the Articles of Impeachment.

PART FIVE

STANDARD OF PROOF AND IMPACT OF THE JURY VERDICT

Article I, Section 3 of the Constitution vests the Senate with the sole power of removing an impeached Federal official from public office. The exercise of this unique constitutional

responsibility, in essence, involves a three step process. First, each Senator must determine the appropriate standard of proof to apply in an impeachment proceeding. Second, each Senator must evaluate all the evidence in light of this standard to determine whether the impeached official is guilty as charged. Third, if it is concluded that the respondent committed the misconduct, then the remaining issue is whether that conduct rises to the level of an impeachable offense.

Senate precedent as well as the nature and purpose of impeachment dictate that a civil rather than criminal standard of proof applies in this and any impeachment case. Judge Hastings' reliance on the criminal standard of beyond a reasonable doubt has absolutely no historical support. Moreover, it is inconsistent with the very function of impeachment in our constitutional Government.

In 1986, the Senate overwhelmingly rejected Judge Harry Claiborne's motion to designate beyond a reasonable doubt as the standard of proof in impeachment proceedings.[271] In doing so, the Senate established that it is up to each Senator to determine the standard of proof to be applied to the evidence.[272] For example, each Senator does not have to be convinced that the evidence establishes beyond a reasonable doubt that Judge Hastings participated in the conspiracy with William Borders. The Senators

---

[271] 132 Cong. Rec. S15507 (daily ed., October 6, 1986). The vote was 75 to 17.

[272] 132 Cong. Rec. S15506 (daily ed., October 7, 1986).

may differ in their conclusions as to what standard of proof is appropriate.

Today, reliance on a civil standard rests on even stronger precedent. In this very case, the Senate determined that impeachment is not a criminal proceeding. By rejecting Judge Hastings' motion that the doctrine of double jeopardy barred this case from going forward, the Senate recognized that impeachment is remedial rather than criminal in nature. It is an independent proceeding serving a fundamentally different purpose than criminal prosecution. By making this decision, by a vote of 97 to 1, the Senate established that impeachment is a civil proceeding.

Therefore, when taking the first step toward resolving this case, each Senator should choose a civil standard of proof. The House submits that the appropriate standard is preponderance of the evidence. If, on any Article of Impeachment, a preponderance of the evidence establishes Judge Hastings' guilt, then conviction is warranted.

What does "preponderance of the evidence" mean? Simply put, if the evidence establishes that it is more likely than not that Judge Hastings engaged in the misconduct as charged, a guilty vote should follow.[273] Put another way, when weighing the opposing evidence, if a Senator finds that the scale on the side of guilt is at all heavier than the scale on the side of innocence, the Senate should find Judge Hastings guilty as charged.

---

[273] Devitt and Blackmar, Federal Jury Practice and Instructions (1977), section 71.14.

The House submits that preponderance of the evidence is the appropriate standard of proof in this or any other impeachment proceeding. If, however, a Senator wants to employ a higher standard, at most that of clear and convincing evidence should be the choice. This, too, is a civil standard, consistent with the nature and purpose of impeachment. If the evidence clearly and convincingly establishes Judge Hastings' guilt on any one Article of Impeachment, he should be removed from office. The House submits that the evidence easily satisfies this higher standard of proof on all 17 Articles of Impeachment.

Implicit in any civil standard is the fact that proof to an absolute certainty is not required. Indeed, proof to an absolute certainty is seldom possible in any case. In this impeachment proceeding, a Senator should vote for conviction if, after consideration of all the evidence, he or she believes that it is more likely true than not that Judge Hastings engaged in the misconduct charged in whatever article is under consideration.

Adopting a civil standard of proof is consistent with the nature and purpose of impeachment. In an impeachment proceeding, the Constitution reserves to the Senate the task of determining whether an impeached government official should retain public office. At issue is the public's trust and confidence in the officials who constitute our government, in this case the public's trust and confidence in the Federal judiciary. The rights of the public at issue here militate against a standard of proof focusing solely on the respondent. A civil standard takes into account the

Senate's weighty responsibility and its obligation to the public to protect the integrity of our institutions of government.

Moreover, the Constitution provides other safeguards to the impeached official, which in turn support a civil standard of proof. Impeachment requires the separate action of each House of Congress. As noted by Alexander Hamilton, the assignment of "the right of accusing" to one House and of "the right of judging" to the other "guards against the danger of persecution from the prevalency of a factious spirit in either of those branches."[274] In addition, "no Person shall be convicted [in the Senate] without the concurrence of two-thirds of the Members present."[275] Alexander Hamilton again emphasized the protection that this provision offers to the impeached official:

> As the concurrence of two-thirds of the Senate will be requisite to a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire.[276]

In light of these safeguards, there is no reason for a Senator to adopt a standard of proof that would fail to provide sufficient protection to the public interest in the removal of a corrupt Federal judge.

Finally, it must be emphasized that Judge Hastings' acquittal in his criminal case in no way alters the conclusion that a civil standard of proof should be used in this proceeding. To

---

[274] The Federalist, No. 66 at 484 (Franklin Lib. ed.).

[275] Article I, section 3.

[276] The Federalist, No. 66 at 484 (Franklin Lib. Ed.).

acknowledge the jury verdict by raising the standard to beyond a reasonable doubt undermines the Senate's determination that impeachment is an independent remedial proceeding. Moreover, raising the standard of proof based on the jury verdict mixes apples with oranges. A decision as to what standard applies in an impeachment case should depend upon the nature of impeachment, not upon any prior judicial proceeding. For example, the Supreme Court has consistently held that a civil proceeding can follow a criminal case that was based upon the same facts.[277] No matter what the outcome of the earlier criminal case, in the subsequent civil proceeding, a civil standard of proof, not beyond a reasonable doubt, applies.

It is the position of the House of Representatives that Judge Hastings' acquittal is, in fact, of no consequence in this case. In an impeachment, both the House and Senate have a unique constitutional responsibility. To defer to a jury verdict in effect places in the hands of the Judicial Branch what is clearly a legislative function. Moreover, in this case, to defer to the acquittal would be tantamount to accepting a jury verdict obtained by fraud.

At most, Judge Hastings' acquittal should be one of several factors weighed by the Senate when exercising its constitutional responsibility. The House submits that even if a Senator puts the verdict into the equation, the evidence is nonetheless overwhelming

---

[277] See e.g. United States v. One Assortment of Firearms, 465 U.S. 354 (1984); Helvering v. Mitchell, 303 U.S. 391 (1938).

that Judge Hastings participated with William Borders in a conspiracy to obtain a bribe. Judge Hastings is guilty as charged.

VI. CONCLUSION

For the foregoing reasons, the House of Representatives submits that the Senate should convict Judge Hastings on all 17 Articles of Impeachment.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron /LEF
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

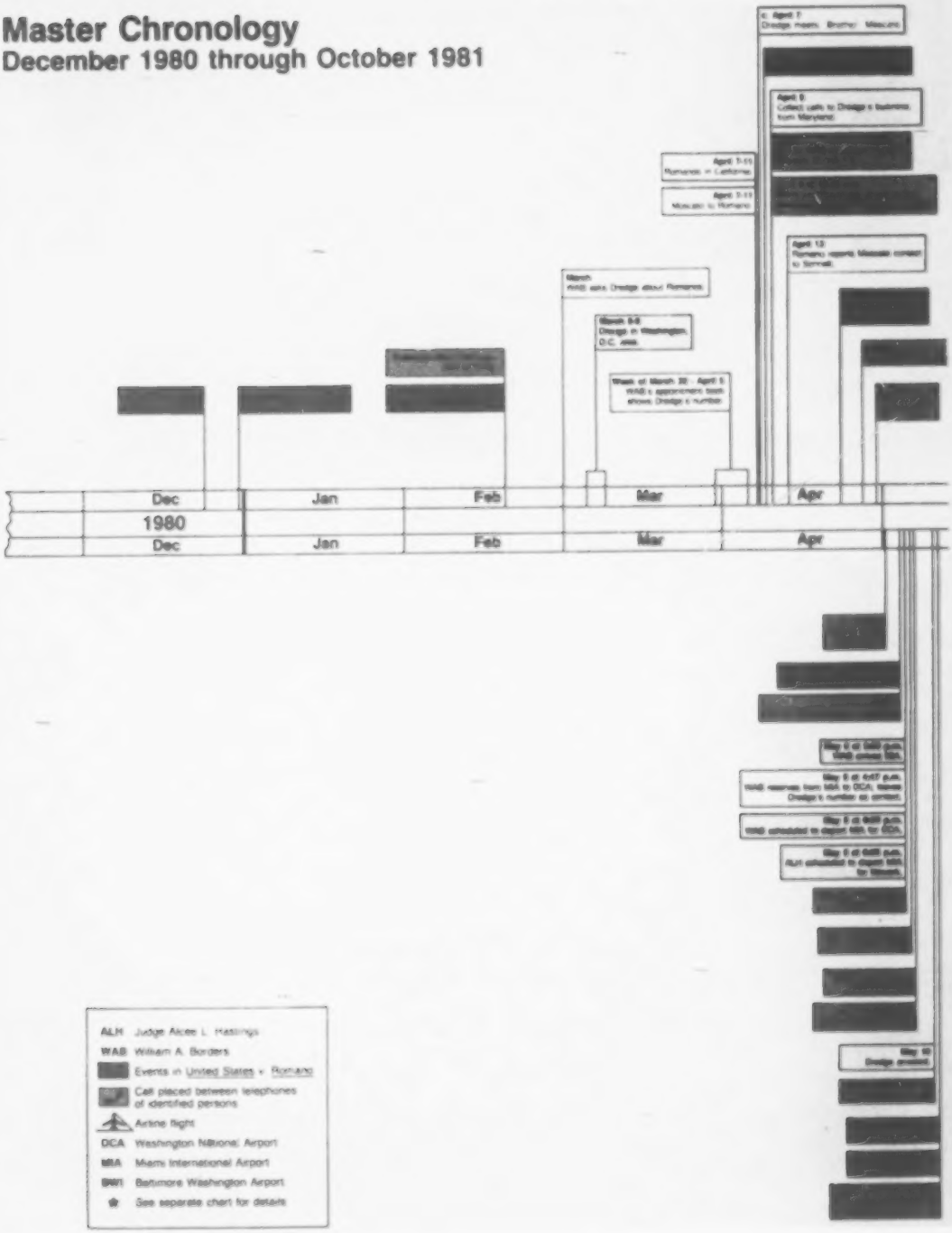
House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

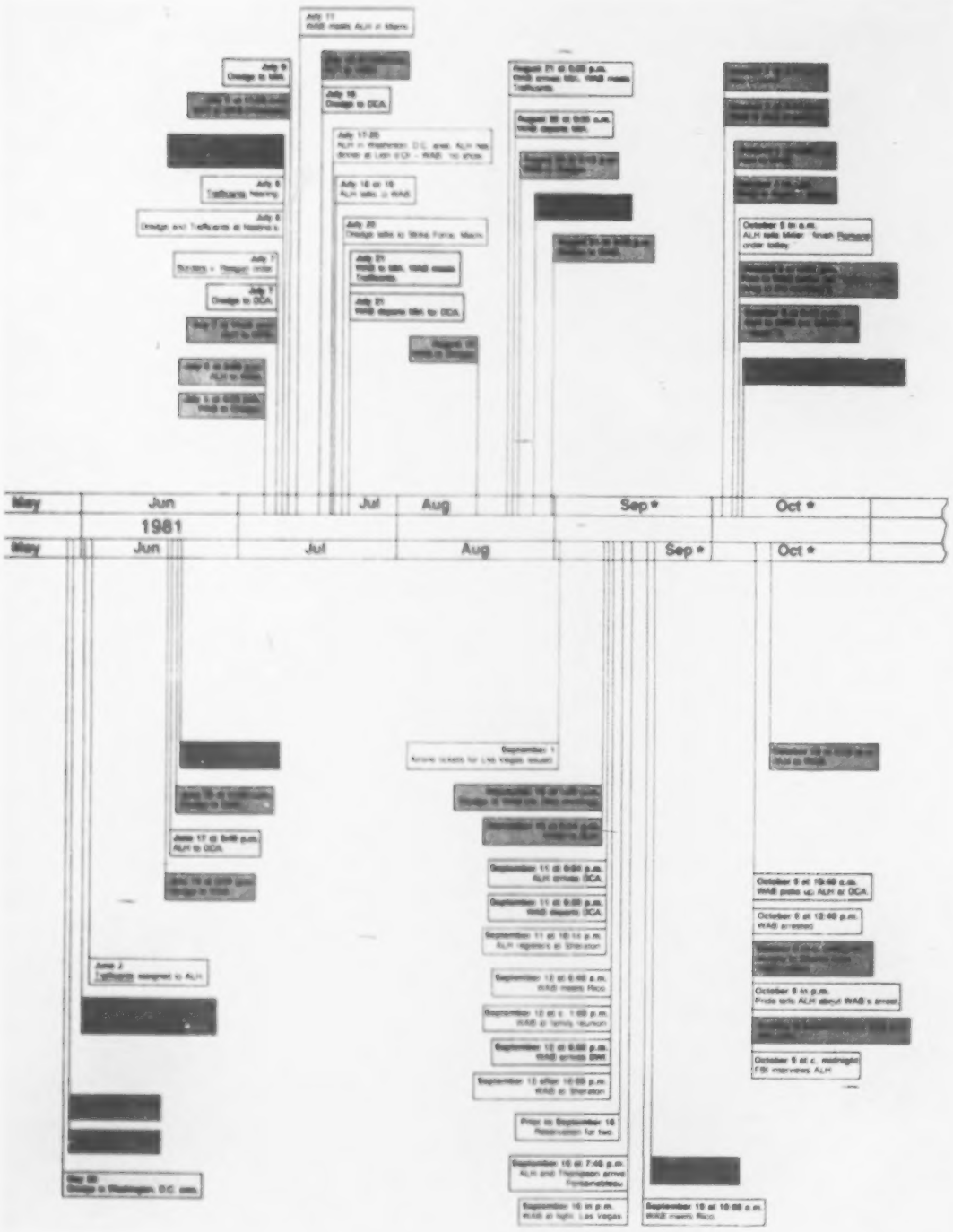
William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

September 25, 1989

ATTACHMENT A

Master Chronology
December 1980 through October 1981




May
Jun
Jul
Aug
Sep *
Oct *
1981
May
Jun
Jul
Aug
Sep *
Oct *

ATTACHMENT B

Activities of September 1981

Date		Event	
Tuesday, September 1		• Airline tickets for Las Vegas issued	
11:36 am	• WAB to ALH		
Wednesday, September 9			
9:53 am	• Dredge to WAB		
Thursday, September 10			
8:00 am	• WAB to Dredge		
9:35 am	• ALH to WAB (msg.)		
1:29 pm	• Dredge to WAB (re: Rico meeting)		
4:40 pm	• WAB to ALH		
5:10 pm	• ALH to WAB (msg.)		
5:34 pm	• WAB to ALH		
Friday, September 11			
3:37 pm	• ALH to WAB		
4:20 pm	• ALH to WAB (msg.)		
7:30 pm		• WAB does not take flight to Miami	
8:04 pm			• ALH arrives DCA • WAB departs DCA
9:20 pm			
10:14 pm		• ALH registers at Sheraton	
Saturday, September 12			
1:30 am			• WAB arrives MIA
8:40 am		• WAB meets Rico	
11:00 am			• WAB departs MIA for West Palm Beach
c. 1:00 p.m.		• WAB at family reunion	
1:06 pm		• WAB reserves EAL 532 to depart West Palm Beach at 4:13 pm	
3:30 pm		• WAB cancels EAL 532, reserves EAL 266 to depart Melborne at 4:35 pm	
4:39 pm		• At Melborne, WAB cancels EAL 266, reserves EAL 858 to depart Orlando, 8:08 pm	
6:02 pm		• At Orlando, WAB cancels EAL 858, reserves 664 to depart Orlando at 6:45 pm	
7:00 pm			• WAB departs Orlando • WAB arrives BWI
8:58 pm			
after 10:00 pm		• WAB at Sheraton	
Prior to September 16		• Reservation for two	
Wednesday, September 16			
7:45 pm		• ALH and Thompson arrive Fontainebleau	
pm		• WAB at fight, Las Vegas	
Friday, September 18			• WAB and Petty arrive DCA
8:00 pm			• WAB departs DCA
9:20 pm			
Saturday, September 19			
10:00 am		• WAB meets Rico	
September 20 or 21	• WAB and ALH talk		

Call Placed between telephones of identified persons. Airline flight.

ATTACHMENT C

Activities of October 1981

Date		Event	
Friday, October 2			
3:11 pm	• Rico to WAB		
4:50 pm	• WAB to ALH chambers		
Sunday, October 4			
9:38 am	• Rico to WAB		
pm	• WAB to ALH (message)		
Monday, October 5			
am		• ALH tells Miller "finish Romano order today"	
4:22 pm	• Rico to WAB (order out "today or first thing in the morning")		
5:12 pm	• ALH to WAB (re letters for "Hemp")		
Tuesday, October 6		• Romano order mailed special delivery	
Wednesday, October 7			
12:19 pm	• Rico to WAB ("it went out yesterday")		
7:39 pm	• WAB to Rico		
Thursday, October 8			
9:37 am	• ALH to WAB		
Friday, October 9			
10:40 am			• WAB picks up ALH at DCA
am		• ALH with WAB	
11:45 am	• WAB to Rico		
12:40 pm		• WAB arrested	
c. 2:45 pm	• Murphy to Shorter from WAB's office		
c. 2:45 pm	• Shorter to Pride		
pm		• Pride tells ALH about WAB's arrest	
2:50 pm		• FBI arrives to interview ALH staff	
2:50 to 3:00 pm		• FBI arrives to interview P. Williams	
4:37 pm	• At BWI: ALH to mother		
4:43 pm	• At BWI: ALH to mother		
5:06 pm	• At BWI: ALH to P. Williams		
5:07 pm	• At BWI: P. Williams to ALH		
5:22 pm	• At BWI: P. Williams to ALH from pay phone		
5:24 pm	• At BWI: ALH to P. Williams at pay phone		
6:30 pm			• ALH scheduled to depart BWI
8:38 pm			• ALH scheduled to arrive Ft. Lauderdale
c. Midnight		• FBI interviews ALH	
Monday, October 12			
8:30 pm	• ALH to WAB		

Call Placed between telephones of identified persons.

Airline flight